

Volume 3

Pages 376 - 550

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JACQUELINE SCOTT CORLEY, MAGISTRATE JUDGE

SERGIO L. RAMIREZ, on behalf of)	
himself and all others similarly)	
situated,)	
)	
Plaintiff,)	
)	
VS.)	NO. C 12-0632 JSC
)	
TRANSUNION, LLC,)	
)	San Francisco, California
Defendant.)	
)	

Wednesday, June 14, 2017

TRANSCRIPT OF TRIAL PROCEEDINGS

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(Appearances continued, next page)

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I N D E X

Wednesday, June 14, 2017 - Volume 3

	<u>PAGE</u>	<u>VOL.</u>
Plaintiff rests	550	3

PLAINTIFF'S WITNESSES

	<u>PAGE</u>	<u>VOL.</u>
FERRARI, ERICH (SWORN)	388	3
Voir Dire Direct Examination by Mr. Soumilas	388	3
Voir Dire Cross-Examination by Mr. Luckman	394	3
NEWMAN, BRENT Videotaped Testimony	401	3
FERRARI, ERICH (SWORN)	402	3
Direct Examination by Mr. Soumilas	402	3
Cross-Examination by Mr. Luckman	428	3
LYTLE, ROBERT VIDEOTAPED TESTIMONY	450	3
O'CONNELL, MICHAEL (SWORN)	458	3
Direct Examination by Mr. Francis	458	3
Cross Examination by Mr. Newman	492	3
Redirect Examination by Mr. Francis	527	3
Recross-Examination by Mr. Newman	545	3
Further Redirect Examination by Mr. Francis	548	3

E X H I B I T STRIAL EXHIBITS

	<u>IDEN</u>	<u>EVID</u>	<u>VOL.</u>
8, Part B		402	3
9		538	3
10		540	3
14		502	3
19		513	3

I N D E XE X H I B I T S

<u>TRIAL EXHIBITS</u>	<u>IDEN</u>	<u>EVID</u>	<u>VOL.</u>
22		401	3
23		401	3
27			3
34 and 35		458	3
48		507	3
49		515	3
72		522	3
74		518	3
93		524	3

Wednesday - June 14, 2017

8:26 a.m.

P R O C E E D I N G S

(The following proceedings were held outside of the presence of the Jury)

THE COURT: Good morning.

MR. SOUMILAS: Good morning, Your Honor.

MR. NEWMAN: Good morning, Your Honor.

THE COURT: So before we begin, let's see. Mr. Jain has called several times, and his BART train was running late. I suspect he will be here in about 20 minutes.

MR. NEWMAN: Okay.

THE COURT: So we have some time. And then, Ms. Parsons advised us this morning an that she knows Ken Harvey. Ken Harvey is where Ms. Coito worked before --

MR. LUCKMAN: Right.

THE COURT: So I don't think that's an issue.

MR. NEWMAN: I don't think it's an issue, either.

MR. FRANCIS: Not an issue for us, Your Honor.

THE COURT: All right, I'll tell her. Thank you very much.

MR. NEWMAN: Okay, you can give her the bad news.

THE COURT: No, no. So, I did meet with her yesterday. She very much wants to be on the jury.

MR. NEWMAN: Good.

THE COURT: Actually, what happened was -- everyone

1 can be seated, by the way, unless you want to stretch.

2 She had left at 6:45 a.m. She has to drive, apparently.
3 And she parked, and then with her phone she got lost. So she
4 said she was walking around the city.

5 **MR. NEWMAN:** Oh, no, oh, no.

6 **THE COURT:** And then she didn't have the sheet with
7 her with our phone number, so she couldn't call. But she
8 actually went to great lengths to be here, and glad to be here.

9 **MR. NEWMAN:** Good. I'm glad to hear that.

10 So Your Honor, our issues this morning which we wanted to
11 address before Mr. O'Connell is on the stand relate to Exhibit
12 34 and 35. This is the letter from OFAC to TransUnion, and
13 TransUnion's letter back to OFAC.

14 We have asserted an objection under 403. Undue prejudice,
15 confusing, cumulative.

16 But what I would like to spend most of my time talking
17 about, if we could, is on Exhibit 34, if Your Honor overrules
18 the 403 objection, 34 has some very specific problems with
19 hearsay and particular prejudice in the text of the letter.

20 And I have marked up, if I could hand up to the Court, --

21 **THE COURT:** Sure.

22 (Document handed up to the Court)

23 **MR. NEWMAN:** -- the particular text that --

24 (Document tendered)

25 **MR. NEWMAN:** -- we believe that needs to be redacted,

1 even if the two exhibits are otherwise admitted.

2 You will see, it states (As read):

3 "Since our meeting with you in July, 2007 and subsequent
4 correspondence of May 27, 2008, the Office of Foreign Assets
5 Control (OFAC) continues to hear from credit bureau clients and
6 individual consumers who have been adversely affected by
7 screening products relating to OFAC targets that are associated
8 with consumer credit reports."

9 This is hearsay. We don't know --

10 **THE COURT:** No, no, no, it's not being offered for the
11 truth. It's going to TransUnion's state of mind.

12 **MR. FRANCIS:** Yes.

13 **THE COURT:** This is what they were told. Which is
14 completely relevant to willfulness. It's all what TransUnion
15 -- now, TransUnion may respond: We didn't believe it, da, da,
16 da, but it may be completely wrong. But that's what the
17 government told TransUnion.

18 **MR. NEWMAN:** But it doesn't say -- it continues to
19 hear from credit bureau clients. We don't know which credit
20 bureau. It doesn't say: We continue to hear from TransUnion
21 clients or TransUnion consumers.

22 **THE COURT:** Okay.

23 **MR. NEWMAN:** And similarly, we remain concerned that
24 name-matching services and interdiction products used by credit
25 bureaus -- again, it doesn't say "used by TransUnion," doesn't

1 say which credit bureau -- to inform clients about potential
2 dealings with persons on the SDN list may be creating
3 unnecessary confusion.

4 **THE COURT:** Objection overruled.

5 **MR. NEWMAN:** Very good, Your Honor.

6 **THE COURT:** Did you want me to look at 35?

7 **MR. NEWMAN:** No. Based on your ruling on 34, I know
8 what you will do on 35. But our objection --

9 **THE COURT:** Okay.

10 **MR. NEWMAN:** You've heard it.

11 **THE COURT:** Yeah, I don't think it is being offered
12 for the truth of the matter asserted. Just as to TransUnion's
13 state of mind, which is actually the issue in the case, I
14 believe. Or at least a very big issue in the case.

15 **MR. NEWMAN:** I understand Your Honor's ruling.

16 **THE COURT:** Okay.

17 **MR. FRANCIS:** Thank Your Honor.

18 **THE COURT:** That's it?

19 **MR. FRANCIS:** Yeah.

20 **THE COURT:** Relax.

21 **MR. LUCKMAN:** Before we relax, I understand they are
22 going to call their expert Mr. Ferrari after the videotape.

23 **MR. FRANCIS:** Yes.

24 **MR. LUCKMAN:** And we have a concern that if they're
25 going to try to build a foundation or otherwise attempt to go

1 outside of your previous order to or to increase -- you said
2 you could build a foundation. It seems to me it might be
3 something appropriate to do outside of the hearing of the jury.

4 **THE COURT:** How do you intend to use him?

5 **MR. LUCKMAN:** We didn't discuss it.

6 **MR. SOUMILAS:** So, Your Honor, we intend to call
7 Mr. Ferrari after the video, and go through his opinions in
8 front of the jury.

9 We will -- part of the development of the testimony will
10 be his experience and his understanding of software available
11 to his clients to do screening of SDNs.

12 So, he consults with financial institutions that use
13 screening software. And part of what we will establish -- we
14 would like to do it in front of the jury -- is that he gives
15 advice on what type of rules the screening software should set
16 to try to identify SDNs. He doesn't do the technical work, the
17 programming, the coding.

18 What he tells them is: You've got use these two
19 variables. You've got to use an address. You've got to use a
20 name; you've got to use a date of birth.

21 So what he does is he knows the names of the software, the
22 clients that use it, how they use it in the very business of --

23 **THE COURT:** But what is the opinion he is going to be
24 giving on that?

25 **MR. SOUMILAS:** The opinion that he is going to be

1 giving is that in his experience in dealing with financial
2 institutions, no one uses just a single variable to do the
3 screening, only a name. All the other software that he is
4 familiar with and the methods use at least two variables.

5 **MR. LUCKMAN:** Your Honor, I think if -- his deposition
6 testimony is that he has -- he knew of two names of companies
7 that were in the interdiction business, and he had no idea what
8 the software capabilities were.

9 So, I thought that was the basis of your earlier ruling,
10 that he no business talking about that. So for them to come in
11 and have him testify that --

12 **THE COURT:** Well, I think what I said, we should do it
13 outside the jury. Right?

14 **MR. SOUMILAS:** I wasn't clear, from Your Honor's
15 order.

16 **THE COURT:** Is he here?

17 **MR. SOUMILAS:** He's here.

18 **THE COURT:** Why don't we do it now? We can put him on
19 the stand.

20 **MR. SOUMILAS:** On that issue alone, Your Honor?

21 **THE COURT:** Whatever issue you want do. I did a
22 ruling. Right?

23 **MR. SOUMILAS:** Right.

24 **THE COURT:** So to the extent you want him to testify
25 beyond that ruling, then you're going to have to make your

1 showing.

2 **MR. SOUMILAS:** So I don't think we want him to testify
3 beyond that ruling, Your Honor.

4 **THE COURT:** Uh-huh.

5 **MR. SOUMILAS:** But I think the issue is not that he
6 works for these software companies or consults with them. What
7 he does is he works with financial institutions to identify
8 SDNs in all types of settings.

9 Part of that is his clients use interdiction software. He
10 knows what software they use, and he gives them advice about
11 what filters to apply to the software.

12 It's not as if we're offering him for -- you know, he
13 knows, you know --

14 **THE COURT:** I know, but Mr. Luckman just told me he
15 testified to something different at his deposition.

16 **MR. LUCKMAN:** His deposition, Pages 80- I think -6 or
17 -7, I have the note --

18 **MR. SOUMILAS:** We will not offer any testimony about
19 his technical knowledge of how software operates. Absolutely
20 not. No, we're not going to go there.

21 **MR. LUCKMAN:** He doesn't know about the capabilities.
22 How can he say what people should use? That doesn't make
23 sense.

24 **THE COURT:** That's not what he's saying, what they
25 should use. He's saying what they do use. That those

1 companies for whom he's consulted all use more than just
2 name-matching.

3 **MR. SOUMILAS:** Precisely.

4 **MR. LUCKMAN:** I think if your order was if counsel can
5 lay a proper foundation beyond what's in his declaration,
6 Paragraphs 24 and 26, he can testify regarding interdiction
7 software and the types of screening software available.

8 So I think we need to build a foundation, if he can say
9 that beyond he's just saying it, that: Does he have a
10 financial services client that he's provided this information
11 for?

12 I think he's in the courtroom. It's no secret what we're
13 going to do.

14 But if he's just going to say that: Yeah, I've got some
15 clients over the years and that's what I do for them, I'd like
16 to find out if it's a bank that does them manually. Because he
17 also said some of it's done manually.

18 Is he representing a credit card company, or Bank of
19 America? Or is it the Bank of Iran that gets two transactions
20 a week? That's not relevant today.

21 **MR. SOUMILAS:** So, Your Honor, we are fine with
22 voir diring Mr. Ferrari outside of the presence of the jury on
23 that issue, only.

24 **THE COURT:** Yes.

25 **MR. SOUMILAS:** What I don't wish to do is to preview

1 his entire testimony so that they get an advantage on
2 cross-examination.

3 **THE COURT:** No, no advantage. It's a civil case,
4 anyway. Everyone's supposed to know. It's supposed to have
5 been previewed.

6 **MR. SOUMILAS:** So we will call him right now.

7 **THE COURT:** Yeah. Let's do that while we're waiting
8 for Mr. Jain.

9 **MR. SOUMILAS:** Mr. Ferrari, will you come up?
10 Your Honor, given that the Court's already reviewed
11 Mr. Ferrari's credentials, can we skip over that?

12 **THE COURT:** Of course. He is the lawyer, right?

13 **THE WITNESS:** Yes, Your Honor.

14 **THE COURT:** Good morning.

15 **THE WITNESS:** Good morning.

16 **ERICH FERRARI, PLAINTIFF'S WITNESS, SWORN**

17 **THE CLERK:** Please say your name and spell your last
18 name for the Record.

19 **THE WITNESS:** My name is Erich Ferrari. My last name
20 is spelled F-E-R-R-A-R-I.

21 **THE CLERK:** Thank you.

22 **THE COURT:** Yeah, please just get to the heart of it.

23 **VOIR DIRE DIRECT EXAMINATION**

24 **BY MR. SOUMILAS**

25 **Q** Mr. Ferrari, as part of your legal practice, do you either

1 represent in proceedings or give advice to financial
2 institutions?

3 **A** I do.

4 **Q** What type of financial institutions?

5 **A** Both foreign and domestic financial institutions.
6 Everyone from larger-scale financial institutions to money
7 exchangers.

8 **Q** How about just banks?

9 **A** Banks, yes. I would also note that if you're using the
10 definition of "financial institutions" that's contained in the
11 USA Patriot Act, that's a larger definition. It also includes
12 things like insurance companies, investment banks, even travel
13 agencies. So we also have those types of clients as well.

14 **Q** And are you part of any professional associations that
15 offer advice to financial institutions?

16 **A** I am.

17 **Q** Which ones?

18 **A** I am on the board of advisors for the Anti-Money
19 Laundering Association.

20 **Q** What is that?

21 **A** That is an organization that provides advice and training
22 and seminars for smaller banks and credit unions, primarily.
23 And I have also provided training seminars on behalf of ACAMS,
24 which is the Association of Certified Anti-Money Laundering
25 Specialists.

1 Q How many financial institution members does the AMLA have?

2 A I'm not sure, but I believe it's in the hundreds.

3 Q And do you personally provide advice sometimes to those
4 financial institutions as part of your professional association
5 with the AMLA?

6 A I typically give advice to AMLA when they get an inquiry
7 from one of their members. So it's not necessarily always a
8 direct communication with those particular institutions.

9 Q Now, in giving advice either to your professional
10 association or as part of your practice, is part of the advice
11 how to properly identify SDNs?

12 A Yes.

13 Q And why is that part of your practice?

14 A Because a big part of our practice is compliance. And
15 part of compliance is ensuring that you are not processing
16 transactions on behalf of SDNs, or where there's an SDN
17 interest that would benefit from the transaction being
18 facilitated. So, that's the primary reason why we do that.

19 Q Are you aware whether certain of your financial
20 institution clients use some type of software as part of the
21 process of screening for SDNs?

22 A I am.

23 Q And, what type of software are you familiar with as part
24 of your experience in giving advice?

25 A Well, typically, they start off with an interdiction or a

1 screening software. And then they also use due diligence tools
2 if they're trying to determine whether a potential match is an
3 actual hit.

4 Q And focusing just on the interdiction software to begin
5 with, are you familiar with any of them?

6 A Yes, I am.

7 Q And which ones?

8 A For example, MK Data Services, ATTUS Technologies which is
9 now CSI, HotScan, and then there's a number of different
10 providers.

11 Q And how are you familiar with this interdiction software?

12 A Well, typically, the clients ask me, you know, what types
13 of screening software have I heard other clients using, and
14 I'll inform them about that.

15 And they'll say: Well, what, for example, should we be
16 doing?

17 And I'll say: Well, you should be screening for either
18 names or addresses or any of the information that's on the OFAC
19 SDN list.

20 But I just want to make clear, I'm not involved in the
21 actual technical setting of those softwares, or adjusting them.
22 I basically provide information to them as to the fact that
23 they should be using interdiction software, what they should be
24 looking for in using that interdiction software, and then also
25 adjusting their filter to take out names that potentially will

1 lead to a higher rate of false positives.

2 Q When you say "filters," are these the filters that are
3 part of the software technology?

4 A Yes, that's correct. So whatever I mean here is words
5 that they're screening against, for example.

6 Q Okay. So you give them advice on what words they should
7 be screening against, but you don't do the technical work on
8 adjusting the filters in the software afterwards?

9 A I think that's right in part, but I just want to clarify
10 one thing.

11 Q Please do.

12 A How it really works is they'll come back, and they'll say:
13 We're getting a high number of matches for -- let's say a
14 client in Africa, in Zimbabwe. They'll say: We're getting a
15 lot of matches with the word "Mugabe." Do you think we're okay
16 if we take out "Mugabe" or we filter out that word?

17 And so we might say yes or no, depending on what the
18 particular word or phrase that is leading to the matches are.

19 Q And do you give regularly advice to clients on whether
20 they should be using personal identifiers on the OFAC list, in
21 order to properly and accurately identify SDNs?

22 A Yes. Both in relation to their KYC process, which is
23 "know your customer," KYC, and what information they should be
24 collecting on the front end when they're on-boarding a client,
25 as well as what information that they should be screening with

1 their software.

2 Q In your experience with consulting with these financial
3 institutions, do -- is it the industry practice for them to
4 screen against a name only?

5 A No, it's not.

6 Q Are you aware of a single SDN entry on the OFAC list that
7 is identified only by name, and no other identifier whatsoever?

8 A I'm not.

9 Q What other types of identifiers are available?

10 A Dates of birth, nationalities, addresses, passport
11 numbers, aliases, both strong aliases and weak aliases. I have
12 even seen certain entries that have email addresses associated
13 with them.

14 Q Have you seen any of your financial institution clients --
15 I'm sorry.

16 Have you given advice to any of your financial institution
17 clients as to how many or what types of personal identifiers
18 they should use as filters in their interdiction software?

19 A I have.

20 Q And, how do you go about giving up that advice?

21 (Reporter interruption)

22 THE WITNESS: Sure.

23 Typically, I tell them they should be matching at least
24 two identifiers. The more the better. Because ultimately you
25 want to reduce the rates of false positives.

1 So, for example, obviously you're going to screen against
2 name, but you also want to screen against the date of birth or
3 an address. Or if an address matches, perhaps you want to
4 screen against both the address and a date of birth, for
5 example.

6 **MR. SOUMILAS:** So, Mr. Ferrari, thank you.

7 **THE COURT:** I think Mr. Luckman should ask some
8 questions, because this testimony does seem like it would be
9 helpful to the jury. And his experience seemed somewhat
10 different than it appeared before.

11 So you can go ahead and question him.

12 **VOIR DIRE CROSS-EXAMINATION**

13 **BY MR. LUCKMAN**

14 **Q** Good morning. Bruce Luckman, represent TransUnion. I'm
15 going to ask you a couple of questions.

16 **A** Good morning.

17 **Q** I'm not sure if I heard the letters right, or the
18 acronyms.

19 Did you say one of the software programs you are familiar
20 with is A-T-I-S?

21 **A** A-T-T-U-S. ATTUS.

22 **Q** Oh, ATTUS. Is that a public company?

23 **A** Well, is it publicly traded?

24 **Q** Yeah.

25 **A** I'm not sure it's public. You can find it.

1 Q Is that the one that's only available to federal
2 employees? Or is that a different one?

3 A I don't believe it's only available to federal employees.

4 Q It's a different company?

5 A Right.

6 Q You were talking about a company that is having trouble
7 with the word "Mugabe." Is that the name they are having
8 issues with?

9 A That's correct.

10 Q Okay. And they're an African bank?

11 A They are.

12 Q Where do they do business?

13 A They do business throughout Africa, as well as throughout
14 the world.

15 Q They have branches in America?

16 A They do not have a branch in America. But they process
17 dollar-clearing payments through the United States.

18 Q Okay. In your deposition, you testified that you had no
19 knowledge about the software capabilities of interdiction
20 systems in 2011. Could you explain what you meant in that
21 response?

22 A Well, I think what I was referring to is I don't know how
23 the algorithms actually work. I don't know how the stuff is
24 coded or how it matches, other than there's different types of
25 technologies. For example, there's exact or actual matching

1 and there's probabilistic matching.

2 And then within probabilistic matching, you have phonetic
3 matching, as well as fuzzy logic that's utilized.

4 Q Have you ever seen a list of the available filters for any
5 particular software interdiction program?

6 A I believe I have at some point, but I can't recall
7 offhand. That's not something that is -- that I commonly see
8 in my practice.

9 Q Okay. So when you tell people what they should do as far
10 as what filters they should use, you're giving them, for lack
11 of a better word, legal advice about what they should be
12 looking at.

13 A Well, I am a lawyer, so yes, the advice I provide is legal
14 advice.

15 Q That's what we do.

16 A Right.

17 Q So do you audit them, and see if they did what you told
18 them to do?

19 A I'm part of a team that performs audits as well as
20 monitorships on certain banks, yes.

21 Q So if you give -- we'll get to which banks, but if you
22 give advice that they should use particular filters, do you
23 personally go back and check and see that they are now using
24 those filters?

25 A I don't personally check, but I review reports that are

1 prepared by monitors or compliance personnel. From either the
2 banks or outside firms.

3 Q Okay. So, which filters do you recommend?

4 A Well, again, it depends on where the client is located,
5 what's returning a high list of probabilities.

6 If you are talking about identifiers to match, which is
7 different than adjusting the filter, necessarily, then
8 typically I tell people to look at passport numbers, if
9 available; dates of birth; and addresses.

10 Q Okay. I take it you have looked at the OFAC list.

11 A Yeah. Pretty much every day, for the last ten or 12
12 years.

13 Q Have you ever seen a United States address?

14 A Yes, I have.

15 Q How many times?

16 A Not frequently, because there's very few U.S. persons on
17 that list.

18 Q Okay. Have you ever seen a U.S. Social Security number?

19 A Yes, I believe I have. Yes.

20 Q Do you remember any particular instance where you saw one?

21 A I believe it was in the case of Richard Chickali, which is
22 a public case where he actually sued the Department of State
23 for providing his Social Security number and having it included
24 in the OFAC identifying information.

25 Q Do you ever recommend that people search for SSNs on the

1 list?

2 **A** I recommend to them that they should search for as much
3 information as available. And so if that is contained in the
4 OFAC identifying information that's on the list, then they
5 should search for that.

6 **Q** You don't know how many American Social Security numbers
7 actually are on the list, do you?

8 **A** I don't know the exact number, but I would say it's pretty
9 low.

10 **Q** Okay. You would agree it's pretty low?

11 **A** I would agree it's pretty low, yes.

12 **Q** When you are talking about the banks you're giving this
13 advice to, your legal advice to, you said that one is in
14 Africa. Are there any American banks that you are giving
15 advice to?

16 **A** Yes.

17 **Q** And, are they members of CDIA? Do you know what that is?

18 **A** No, I don't know what that is.

19 **Q** Do you ever give speeches or seminars to CDIA?

20 **A** I have not given any speeches or seminars to CDIA.

21 **Q** You don't know what it is?

22 **A** I'm not familiar with it, no.

23 **Q** And you said that you gave speeches or seminars to
24 something called N -- ANLA? Is that what -- what was --

25 **A** AMLA, the Anti-Money Laundering Association?

1 Q Okay, and who are members of that?

2 A Various different credit unions and small banks.

3 Q And when you say a small bank, give me an idea of what's a
4 small bank.

5 A Typically a bank that does under 150 billion in
6 transactions per year is considered a small bank.

7 Q Do you know how many times they are looking at the OFAC
8 list a day?

9 A I don't, no.

10 Q Could you give a couple of examples of banks that are part
11 of that group that you represent?

12 A I can't, because as I mentioned to Mr. Soumilas, it's
13 typically the AMLA is contacting me and saying: One of our
14 member banks has said -- has had this question, and how should
15 we respond to them?

16 Q So you're not giving direct advice; you are hearing a
17 question through the association, and you are responding to
18 that?

19 A Correct.

20 Q Do you -- does the association recommend any particular
21 interdiction software?

22 A Not that I'm aware of.

23 Q Does the association recommend any particular things that
24 should be looked for on the list as part of their OFAC
25 compliance?

1 **A** Not that I'm aware of.

2 **Q** Are you aware -- do any of your clients use a
3 non-interdiction process, non-interdiction software process to
4 get start reasonable doubt?

5 **MR. SOUMILAS:** Your Honor, I think that's where we're
6 going on a preview of his testimony.

7 **THE COURT:** Yeah. I mean, to me -- do you want to ask
8 another question? I think that a lot of it's going to the
9 weight, not to his qualification to give the testimony that
10 Mr. Soumilas questioned him about.

11 **MR. LUCKMAN:** One second, please.

12 That's all I have. Thank you.

13 **THE COURT:** Thank you. I'll allow that testimony.

14 **MR. SOUMILAS:** Thank you, Your Honor.

15 **MR. LUCKMAN:** So just so we are clear, plaintiffs are
16 going to stick to the order?

17 **THE COURT:** That's what he said.

18 **MR. LUCKMAN:** Okay.

19 **MR. SOUMILAS:** The order of what? Of witnesses?

20 **MR. LUCKMAN:** No, the order of the Court.

21 **THE COURT:** The motion in limine order.

22 **MR. SOUMILAS:** Of course, we are going to abide by the
23 order.

24 Mr. Ferrari, you can have a seat. We'll get to you after
25 the video.

1 **THE COURT:** All right, Mr. Jain still has not arrived.
2 All right. Anything else we should take up while we are
3 waiting? So efficient with our time.

4 (No response)

5 **THE COURT:** All right. As soon as he gets here, we
6 will begin.

7 **MR. SOUMILAS:** Thank you, Your Honor.

8 (Recess taken from 8:49 a.m. to 8:57 a.m.)

9 (The following proceedings were held in the presence of
10 the Jury)

11 **THE COURT:** Good morning, ladies and gentlemen. All
12 right. We are going to resume with Mr. Newman. Is that
13 correct? The video of Mr. Newman?

14 **MS. ELLICE:** Correct, Your Honor.

15 **THE COURT:** Okay.

16 **BRENT NEWMAN,**

17 Called as a witness for the Plaintiff herein, testified via
18 videotaped deposition played in open court.)

19 (Time noted: 8:58 a.m. until 9:25 a.m.)

20 **MS. ELLICE:** Your Honor, at this time, pursuant to
21 stipulation of the parties, defendant would move Exhibits 22
22 and 23 into evidence.

23 **THE COURT:** All right, 22 and 23, admitted.

24 (Trial Exhibits 22 and 23 received in evidence.),

25 **THE COURT:** Is the plaintiff prepared to call your

1 next witness?

2 **MR. SOUMILAS:** Good morning, Your Honor. We are.

3 But before that, by stipulation of the parties, at docket
4 289, the stipulation concerning the class list. We would like
5 to move Part B as in "Boy" of Exhibit 8 into evidence. That's
6 the class list in this case.

7 **THE COURT:** All right. Part B of Exhibit 8, admitted.
8 (Trial Exhibit 8, Part B, received in evidence.)

9 **MR. SOUMILAS:** Thank you. And our next witness is
10 Erich Ferrari.

11 **ERICH FERRARI, PLAINTIFF'S WITNESS, SWORN**

12 **THE CLERK:** State your name for the record.

13 **THE WITNESS:** My name is Erich Ferrari. And the last
14 name is spelled F-E-R-R-A-R-I.

15 **DIRECT EXAMINATION**

16 **BY MR. SOUMILAS**

17 **Q** Mr. Ferrari, good morning.

18 **A** Good morning.

19 **Q** Might as we'll get this out of the way, right at the
20 beginning. I'm sure you get this question all the time. Any
21 relation to the Italian sports-car company?

22 **A** This is the first time I have gotten it today, but I
23 usually get it two to three times a day. So yes, pretty much
24 everywhere I go and everything I do involves that sports-car
25 company in some way. I'm not related.

1 Q All right.

2 A Although I wish I was.

3 Q Well, that's unfortunate.

4 Back to the business of this case. Would you tell us what
5 you do for a living?

6 A I'm a lawyer who practices in the field of U.S. economic
7 sanctions.

8 I founded and currently run as the principal attorney a
9 boutique law firm in Washington, D.C., that represents everyone
10 from individuals to companies, financial institutions, even
11 some foreign governments in matters pending before the Office
12 of Foreign Assets Control or in matters that involve U.S.
13 economic sanctions administered and enforced by the Office of
14 Foreign Assets Control at the U.S. Department of the Treasury.

15 Q And is your practice primarily out of Washington, D.C.?

16 A No. Most of my clients are actually all over the world.
17 Our main office is in Washington, D.C.

18 Q And where else do you practice normally?

19 A Well, I have appeared in courts throughout the U.S. I
20 have clients throughout the U.S. I have clients in Africa,
21 Europe, Asia, the Middle East. Australia. South America,
22 Central America. So I think I'm just missing Antarctica at
23 this point. But I have the other continents covered.

24 Q Where did you attend college?

25 A I went to undergrad at Purdue University in West

1 Lafayette, Indiana.

2 **Q** How about law school?

3 **A** I went to St. Mary's School of Law in San Antonio, Texas.

4 **Q** When is the first time in your legal career that you came
5 across OFAC, the Office of Foreign Assets Control?

6 **A** It was as a research fellow at the Center for Terrorism
7 Law, in -- I want to say it was 2003.

8 **Q** In 2003, were you still in law school back then?

9 **A** Yes. And I was a research fellow at the law school. I
10 later became a consultant.

11 **Q** And I'm sorry; you said it was the Center for Terrorism
12 Law.

13 **A** Yes.

14 **Q** What is that?

15 **A** Center for Terrorism Law was a research institute that was
16 organized and initiated after 9-11 to review and discuss legal
17 issues arising in the war on terror.

18 **Q** And what did you do as a fellow for the Institute?

19 **A** I would research all manners of national security law
20 issues. But I developed a very strong interest, almost a
21 passion -- well, I would say a passion, almost an obsession
22 with U.S. economic sanctions as administered by OFAC.

23 **Q** And is that -- how long has that been a part of your law
24 practice?

25 **A** Well, since the first day I have actually started to

1 practice law. But even before that, as a student, that was
2 where all my research was focused for the Center for Terrorism
3 Law.

4 Q And when did you begin to practice law?

5 A I began to practice law in 2007.

6 Q And the firm that you currently run, when was that
7 founded?

8 A February 18, 2009.

9 Q How much of your practice would you say centers around
10 compliance with OFAC?

11 A Compliance? Um, I include compliance and licensing into
12 that category, because licensing is a part of complying with
13 the law.

14 And I would say -- it varies, depending on what's going to
15 on and what matters we're working on, but I would say at least
16 40 percent of our business at any given time is compliance and
17 licensing.

18 Q And what's the licensing part?

19 A Well, the licensing is when a U.S. person wants to engage
20 in transactions with a sanctioned party, a party on the OFAC
21 SDN list or with a sanctioned jurisdiction, and it's not
22 covered by any exemption or general regulatory authorization,
23 they'll have to obtain a license from OFAC in order to proceed
24 in that transaction.

25 Also, when you have foreign parties who want to transact

1 in either U.S.-origin goods, services or technology with
2 designated party or a sanctioned jurisdiction, they may also
3 need licensing.

4 Q As part of your practice, how often do you work with
5 information on the OFAC list?

6 A In almost every case, at some level.

7 Q And this has been from the beginning through the present?

8 A Correct.

9 Q When you say "cases," do you have cases that are cases,
10 like this, in court?

11 A I do.

12 Q And what type of cases do you handle?

13 A So we handle compliance and licensing, as we have
14 discussed. We also defend people in civil administrative
15 investigations carried out by OFAC, where they are
16 investigating sanctions violations.

17 We assist in the removal of parties from the OFAC SDN
18 list, which is also an administrative process. Although
19 sometimes we do find our way into court on those, if we have an
20 unreasonable delay or an adverse decision by OFAC on those
21 cases.

22 And then we also do quite a bit of defense of what we call
23 IEEPA prosecutions. "IEEPA" is short for the International
24 Emergency Economic Powers Act, which is the primary statutory
25 authority for most sanctions programs. And oftentimes we'll

1 defend or be part of a defense team, defending against the
2 prosecution of a party for IEEPA-based sanctions violations.

3 **Q** Can you give us an example?

4 **A** Well, there's a very famous example that I am working on
5 right now, and it's been in the paper a lot. Because Rudy
6 Giuliani, former mayor of New York, and former Attorney General
7 Michael Mukasey are my co-counsel on that case.

8 But there's a case out of New York that involves a money
9 exchanger who is alleged to have unlawfully processed U.S.
10 dollar clearing transactions through the United States on
11 behalf of Iranian banks. So that would be a very famous
12 example of one case we did.

13 **Q** What is a money exchanger?

14 **A** A money exchanger, think of it as almost a informal
15 Western Union, but it's someone who will purchase and sell
16 currency and remit funds internationally, or even, in some
17 cases, domestically on behalf of parties who may not have
18 access to traditional banking systems.

19 **Q** Separate from your cases in court, do you have part of
20 your practice where you give advice in private, consulting or
21 whatever?

22 **A** I do.

23 **Q** Could you explain to the jury what that part of your
24 practice is?

25 **A** Well, that part of my practice is everything that really

1 happens outside of a courtroom. For example, clients will come
2 to us, and they'll need advice on how to comply with the law.
3 So for example: What types of transactions can we do with a
4 certain sanctioned party, or with a certain sanctioned
5 jurisdiction?

6 Or they may ask, for example: How do we make sure that
7 some of the transactions we are processing do not facilitate
8 activities with a designated party or an embargoed
9 jurisdiction?

10 **Q** And as part of that practice, do you give advice to
11 financial institutions?

12 **A** I do.

13 **Q** Banks?

14 **A** Yes.

15 **Q** Could you tell us some of them?

16 **A** I can't tell you those banks.

17 **Q** And why can't you tell us?

18 **A** Well, because that information is privileged.

19 **Q** It's privileged by what?

20 **A** There's an attorney/client privilege. And if I were to
21 reveal the name of the banks, particularly in the context of
22 this courtroom setting, it would identify -- that disclosure
23 would identify what the representation of those banks was
24 related to. And so therefore, I would be breaching the
25 attorney/client privilege if I identified them.

1 Q And have you consulted with anyone as to whether you could
2 identify the names of particular banking institutions?

3 A I have -- we have an outside ethics counsel, and I have
4 discussed this issue with him.

5 Q Can you tell us generally, without identifying the names,
6 what types of financial institutions you give advice to
7 concerning compliance with OFAC?

8 A It depends on how you define "financial institutions." If
9 we're going by the definition of what's in the USA Patriot Act,
10 there's banks; there's investment banks. There's insurance
11 companies. There's even travel agencies are included within
12 that definition. There's money exchangers. And we represent
13 and have represented all of those types of different clients.

14 Q Are you a member of any professional associations that
15 have anything to do with OFAC?

16 A I am.

17 Q Which ones?

18 A I am on the board of advisors for the Anti-Money
19 Laundering Association. And I'm their resident OFAC expert.
20 That's how they describe me on the site.

21 Q What is the Anti-Money Laundering Association?

22 A It is an industry organization that small banks and credit
23 unions subscribe to so that they can get information on their
24 regulatory compliance obligations. Training. They put on
25 seminars. Members can ask questions to the organization. That

1 sort of thing.

2 Q Did you say it was credit unions and smaller banks?

3 A Yes, typically.

4 Q And through your association with the Anti-Money
5 Laundering --

6 A Association?

7 Q Is that what it's called?

8 A Yes.

9 Q Anti-Money Laundering Association, do you provide advice
10 to financial institutions, such as banks and credit unions,
11 through the association, concerning OFAC?

12 A I do. I will get questions from the association. And for
13 example, they'll say: One of our member banks has asked this
14 question. What should they do, or what do you think? How
15 should we respond?

16 Q Now, I take it that you know what SDNs are, since you work
17 with the OFAC list every day.

18 A Yes, I do.

19 Q And, just reminding the jury, what is an SDN?

20 A So SDNs are specially designated nationals and blocked
21 persons. And I think it's important to make a distinction
22 there, because some of the parties are targeted under blocking
23 programs, and others are just identifications for
24 embargo-related programs.

25 But essentially what they are are organizations, corporate

1 entities, and individuals who have been targeted by the
2 Department of Treasury to have sanctions imposed against them
3 because they present or the U.S. government believes that they
4 present some threat to the U.S. national security and foreign
5 policy interests.

6 Q And who puts this list together of these SDNs and blocked
7 persons?

8 A The Office of Foreign Assets Control.

9 Q Is that part of the Department of the Treasury?

10 A It is.

11 Q How long has the list been around?

12 A From what I understand, they first started making it
13 available, I want to say some time in the 19- -- either in the
14 eighties or maybe even the seventies. From what I understand.

15 I -- one thing I would add, too, is that the concept of
16 list-based sanctions program is fairly new. Most of the
17 list-based -- not list-based programs, but the targeted-based
18 programs is something that's developed over the last 30 or 40
19 years. Whereas before, we just had country-wide embargoes.
20 Like the Cuban embargo, for example.

21 Q I understand. Now, focusing on SDNs for a moment, could
22 you please tell the jury who are some of the SDNs on the OFAC
23 list?

24 A Who are specific SDNs?

25 Q Sure, yeah.

1 **A** Well, I guess the most famous ones are -- most famous one
2 would be Osama Bin Laden, probably.

3 **Q** Oh, he's still not on the list?

4 **A** He's still on the list.

5 **Q** Even though he's dead.

6 **A** Yes. and interestingly, I've represented parties that
7 passed away, and remained on the list for several years
8 afterwards.

9 **Q** Why would that continue?

10 **A** The reason is because the government doesn't know at what
11 -- if they were to take him off the list and have his assets
12 released, who those assets would go to.

13 So this is the understanding I've developed from
14 conversations with officials at OFAC, is that you can't just
15 take someone off the list because they died. There has to be a
16 reasonable -- if there's a reasonable cause to believe that
17 those assets could go to other SDNs or to others engaged in
18 nefarious conduct, you want to keep them on the list.

19 **Q** What other types of people who may be known to the public
20 are on the OFAC list?

21 **A** Um, El Chapo.

22 **Q** Explain who that is.

23 **A** El Chapo was -- if I'm getting this correct, was the head
24 of the Sinaloa Cartel, which has been accused by the U.S.
25 government of being a Mexican drug cartel. And he's also quite

1 famous for having escaped jail several times in Mexico. He's
2 currently in New York, awaiting trial in Eastern District of
3 New York.

4 Viktor Bout. I don't know if you know that name, but
5 Viktor Bout was a Russian arms dealer. If anyone's seen the
6 movie *Lord of War* with Nicholas Cage it's loosely based on
7 Viktor Bout. But he was formerly referred to by the U.S. as
8 The Merchant of Death.

9 So I would say those maybe are the three most famous ones.

10 **Q** Would you say generally that the list is comprised of
11 terrorists, money launderers, drug traffickers, those that
12 proliferate in the weapons of mass destruction?

13 **A** Those undermining democratic processes, those engaged in
14 human-rights abuses. But typically, those areas that you
15 described are what the SDN is known -- most well known for.
16 But it's typically conduct that we would view as bad conduct or
17 nefarious conduct, yes.

18 **Q** No Boy Scouts on the list.

19 **A** Not that I'm aware of, no.

20 I would note, however, I have represented some of those
21 parties on those lists, so I don't agree with all of the
22 allegations that have been made. But, as far as a general
23 characterization.

24 **Q** So part of your practice includes that if someone thinks
25 that they are listed by the government, they are placed by the

1 government on the OFAC list but shouldn't be there, you have
2 worked on those type of cases as well?

3 **A** Correct.

4 **Q** And you've also worked on the other side, where financial
5 institutions are trying to avoid doing any business with people
6 that are listed on -- who are SDNs or the list, excuse me.

7 **A** Correct.

8 **Q** Okay. What types of information does the U.S. government
9 provide concerning the SDNs on the OFAC list?

10 **A** Well, whatever information they have available to them.
11 So it could be names, address, passport numbers, dates of
12 birth, national ID numbers or Social Security numbers. I have
13 even seen email addresses on there before.

14 **Q** How long is the list?

15 **A** The last time I checked, it was over 6,000 names.

16 **Q** Have you ever seen a single entry on this list that is
17 listed by name only, and no other information, whatsoever,
18 about that SDN?

19 **A** Not that I recall.

20 **Q** Is there usually some type of other information, whether
21 it be date of birth, address, something?

22 **A** Nationality, yeah. At least, usually a nationality. Or
23 where the party is located.

24 **Q** Now, are you aware of the penalties that are imposed by
25 the U.S. government for violating OFAC?

1 **A** I am.

2 **Q** And are you familiar with the penalties that would be
3 imposed on financial institutions?

4 **A** I am.

5 **Q** And how about on persons who may, themselves, be SDNs on
6 the list?

7 **A** I am, yes.

8 **Q** Okay. From a legal perspective, are credit bureaus or
9 credit reporting agencies like TransUnion subject to any type
10 of a penalty by the Treasury Department if they simply do not
11 provide any information to anyone about SDNs?

12 **MR. LUCKMAN:** Objection, Your Honor. Beyond the scope
13 of the report, asking for a legal conclusion. It's not
14 relevant.

15 **THE COURT:** Overruled.

16 **BY MR. SOUMILAS**

17 **Q** You can answer it.

18 **A** If I understand your question correctly, you're asking me
19 if there's any legal requirement for credit reporting agencies
20 to assist in the screening of individuals?

21 **Q** That's what I'm asking.

22 **A** No. Not that I'm aware of.

23 **Q** And, is there any penalty or consequence if credit
24 reporting agencies just simply stay out of that realm entirely,
25 and don't do anything to identify SDNs to their clients, or to

1 anyone at all?

2 **A** No. Not that I'm aware of.

3 **Q** If credit reporting agencies choose to identify an SDN,
4 are you aware of the legal standards that they must follow in
5 identifying them?

6 **A** Yes.

7 **Q** And are you aware of the standard of maximum possible
8 accuracy, under the Fair Credit Reporting Act?

9 **MR. LUCKMAN:** Objection.

10 **THE COURT:** Sustained. Sustained.

11 **BY MR. SOUMILAS**

12 **Q** Let's go back to penalties that might be available to --
13 not available, but penalties that might be paid by financial
14 institutions if they transact any business with SDNs.

15 What happens if a bank or some other institution does
16 business with an SDN?

17 **A** Well, it depends upon what particular sanctioning
18 authority is implicated, because there's several different
19 statutes, and there's different executive orders and
20 regulations.

21 But typically, it breaks down into two separate types of
22 penalties. You have civil penalties, which are monetary fines.
23 And then you have criminal penalties, which can include both
24 criminal fines, as well as terms of imprisonment.

25 If you are going to look at the whole universe of

1 potential sanctions violations and what the penalties
2 associated with those violations would be, in the civil
3 context, penalties range -- again, depending on the sanctions
4 authority implicated -- anywhere from \$10,000 all the way up to
5 \$10 million.

6 And in the criminal context, \$50,000 all the way up -- I'm
7 sorry. In the civil context, \$10,000 all the way up to
8 \$1 million.

9 In the criminal context, \$50,000 all the way up to
10 10 million. And criminal terms of imprisonment are anywhere
11 from five years all the way up to 30 years.

12 **Q** And this is just for doing business with an SDN?

13 **A** Correct.

14 **Q** Any type of business?

15 **A** Well, so it's important to understand there are certain
16 exemptions in general licenses that are contained within the
17 statutes, or within the regulations, themselves, which may
18 allow certain types of transactions.

19 So for example, if two years ago you were to fly on Iran
20 Air, which was an SDN at the time, you would have been allowed
21 to because there's a travel exemption related to dealings with
22 Iran Air. So really, it's not -- I don't want to say it's all
23 transactions, but it's virtually all transactions.

24 **Q** How about giving credit with someone? Would that be a
25 type of prohibited transaction?

1 **A** I'm not aware of any exemptions or general authorizations
2 that would allow that.

3 **Q** What are the consequences for SDNs?

4 **A** Well, really, the consequences for the SDNs are the fact
5 that they, themselves, have been designated, and therefore they
6 have any assets under U.S. jurisdiction blocked and remain
7 blocked until such time as they're removed. And they cannot
8 transact with U.S. persons, in any way.

9 And why this is a major consequence for SDNs is because
10 most of international trade is done in U.S. dollars. So if
11 you're not able to pay in U.S. dollars or receive payment in
12 U.S. dollars, this can have a dramatic impact on your business.

13 Also, what we have been's seeing recently, there's been a
14 series of prosecutions out of various jurisdictions around the
15 country, is that SDNs who were involved in causing U.S. persons
16 to violate, for example by obfuscating the SDN's own
17 involvement in the transaction, are now being subjected to
18 civil and criminal penalties, as well. So there's a wide
19 variety of legal consequences.

20 I would also say, as someone who has represented a number
21 of SDNs over a years, is that they suffer reputational damage
22 in their home jurisdictions. They -- I've seen SDNs be
23 arrested in their home jurisdiction, or investigated in their
24 home jurisdiction. And so there's both legal consequences as
25 well as just practical consequences.

1 **MR. LUCKMAN:** Objection, Your Honor. Move to strike
2 that testimony about the impact.

3 **THE COURT:** I want to clarify. That's for people who
4 are, in fact, on the list.

5 **THE WITNESS:** Yes, Your Honor.

6 **THE COURT:** All right. I think with that --

7 **MR. LUCKMAN:** Thank you, Your Honor.

8 **MR. SOUMILAS:** And that was my question, Your Honor.

9 **BY MR. SOUMILAS**

10 **Q** For those people who are in fact on the list, as a general
11 rule, would they be prohibited from getting a loan or credit in
12 the United States?

13 **A** Yes, they would be.

14 **Q** Okay. Given the penalties that you just described for
15 both the financial institutions and the SDNs, is it your
16 opinion that it is important to accurately identify who is an
17 SDN?

18 **A** Yes.

19 **Q** And what types of tools are available for the proper
20 identification of SDNs?

21 **A** Well, you have interdiction or screening software that's
22 typically considered the front line or the first line of
23 defense.

24 You also have due diligence tools that can help you dig
25 down a little deeper to get more information about the

1 particular parties that have been returned as possible matches.

2 You have the information which should be contained in a
3 customer information file that was collected from the customer
4 at the time that the transaction was either engaged or at the
5 time that customer was on-boarded.

6 So, there's a variety of different ways and methods and
7 tools to use.

8 Q Now, as part of your practice, for your clients, have you
9 personally worked in situations where it was important to
10 properly and accurately identify whether someone is an SDN?

11 A Yes.

12 Q Whether they refused to do business with them, or maybe to
13 say that they're not an SDN?

14 A Yes.

15 Q And have you seen your financial-institution clients use
16 any type of computer software as part of a process of going
17 about to properly identify SDNs?

18 A I have.

19 Q What type of computer software have you seen as part of
20 your practice with your clients?

21 A I have seen them use interdiction screening software, as
22 well as due-diligence tools.

23 Q And focusing on the screening software first, what ones
24 are you familiar with?

25 A MK Data Services. HotScan. There's one called ATTUS --

1 used to be called ATTUS Technologies. That's A-T-T-U-S
2 Technologies. They're now referred to as CSI. Accuity
3 Compliance Link, I've also heard of. So there's a few
4 different ones.

5 **Q** And what do you do in relation to your clients' efforts to
6 use software to correctly identify SDNs?

7 **A** So what I tell them is a lot of the work revolves around
8 what policies they should have in place. Policies and
9 procedures. And so a lot of that involves minimizing false
10 positives, so that they don't have to sift through hundreds or
11 thousands of possible matches that are not anywhere near being
12 actual matches.

13 So things we will do is tell them: Okay, you should look
14 at two or more identifying pieces of information. You should
15 adjust your filter, maybe, to take out certain key words that
16 maybe you are getting repeat hits on but which are not leading
17 to actual matches.

18 Setting up good guys lists so people that keep getting
19 caught in the filter, but you've already screened to
20 demonstrate that you know them, you have a relationship with
21 them, and they are not that actual SDN.

22 Also, gray lists. Companies where it's unclear whether
23 they are owned or controlled by SDNs.

24 And I think that maybe an important note, too, is it's not
25 -- the SDN designation is not just to that particular entity or

1 person, but anyone owned or controlled by them.

2 So "control" is -- you can separate that out. "Control"
3 are parties who are actually identified in association with the
4 main targeted SDN, but then "owned" are parties or entities
5 where the aggregate ownership is owned 50 percent or more by
6 one SDN or a number of SDNs.

7 So, we do a lot of that kind of work, as well.

8 Q Okay. So you said a lot there. I'm going to try to
9 follow up on a couple of things, if I remember them.

10 A Okay.

11 Q Let's focus on, I think you used the word "filter." To
12 filter for identifying information?

13 A Correct.

14 Q Would you just explain in layman's terms what advice would
15 you give concerning filtering.

16 A Right. So for example, if a client comes to me and they
17 say: We keep getting hits for Robert Mugabe Road, they may
18 ask: Do we need to keep searching for this word "Mugabe"?
19 Because that obviously, in Zimbabwe, would be a very famous
20 name and associated with a lot of different addresses.

21 So we may say: No, you can adjust for filter to take that
22 out.

23 Or it could be a particular company name that we've
24 already accounted for and we've already done our due diligence,
25 and have come to a conclusion that it's not an actual match to

1 the SDN list.

2 Q And do you give any advice concerning the filtering of
3 personal identifying information such as names, dates of birth,
4 addresses?

5 A We do. We tell our clients that you should look at two or
6 more identifying pieces of information. Particularly when it
7 comes to names, because there are so many common names that are
8 contained on the OFAC list.

9 Q So does that mean two at the same time? In other words,
10 to get a match on both a name and an address, or a name and a
11 date of birth?

12 A No. It's usually a name and an address, or a name and a
13 date of birth, a name and a passport number. Address and a
14 date of birth. Date of birth and a passport number. So, a
15 mix.

16 Q So let me just clarify that, because I'm not sure I
17 understood.

18 Is your advice to your client, to your clients, that they
19 should get a mix of personal identifiers in order to make a
20 proper identification?

21 A Of a possible match, yes.

22 Q And what is the minimum number of identifiers, in your
23 experience, that you have seen your clients use to properly
24 identify SDNs?

25 A Two.

1 Q Is anybody using just a name-only match to identify SDNs,
2 in your experience?

3 A That I currently represent? No.

4 Q And, in the -- the industry that you work in, would you
5 consider it to be a common practice for financial institutions
6 to use only a name and no other identifier in order to identify
7 SDNs?

8 A No.

9 Q Do most financial institutions use multiple identifiers,
10 such as a mixture or a combination of name and some other
11 variable?

12 A My clients do, and from I understand, most do. Yes.

13 Q Now --

14 A Can I just correct that? I want to say, instead of
15 "most," many do. Because I don't have the universe of data on
16 all financial institutions. So --

17 Q Thank you.

18 In your opinion, is a name-only procedure for identifying
19 SDNs reliability in accurately identifying people who might
20 actually be on the OFAC list?

21 A No.

22 Q And why not?

23 A Because you would have a high number of false positives
24 returned.

25 Q So you have used that term a couple of times now, "false

positives" Would you tell the jury what that is?

A A false positive is where you have a possible match but it ends up not being the actual party on the SDN list.

Q And in your practice, do your clients sometimes come back with false positives?

A They do.

Q And is it your understanding that your clients wish to have false positives?

MR. LUCKMAN: Objection, Your Honor.

THE COURT: I'll sustain that.

BY MR. SOUMILAS

Q Do you give any advice to your clients as to whether they should reduce false positives?

A I give advice that they should minimize the number of false positives.

Q And why is that?

A Because there's only so much -- so many resources they have to allocate to sanctions compliance.

So if you are sifting through large numbers of false positives, it becomes -- one, you're spending more money, and probably unnecessarily.

And then, two, it becomes harder to identify the actual matches to the SDN list, because there's more to look through.

Q In your experience, have you seen financial institutions that have a blanket policy to just decline to do business with

1 possible SDNs if they just return as possible SDNs?

2 **A** I have seen that, yes.

3 **Q** And why is that?

4 **A** Well, really, they freak out once they hear that they have
5 a possible match.

6 A lot of these guys buy screening software, and they say:
7 Well, we put the money into having this software, so why are we
8 now going to have to go through additional steps?

9 It costs them money. And then, the risk is way too high,
10 given some of the penalties we've discussed. These are very
11 substantial numbers for these individuals. So they just don't
12 want to incur the risk.

13 **MR. LUCKMAN:** Objection, Your Honor. I move to strike
14 that anecdotal discussion about what people are afraid of or
15 not.

16 **THE COURT:** I'm not sure where this is going.

17 Why don't you move on.

18 **MR. SOUMILAS:** Sure.

19 **BY MR. SOUMILAS**

20 **Q** Going back to the SDN list, the OFAC list for a moment,
21 Mr. Ferrari, you've -- you said you have spent years reviewing
22 this list?

23 **A** I have.

24 **Q** And have you ever seen Social Security numbers on that
25 list?

1 **A** I have. I believe so, yes.

2 **Q** And have you seen passport numbers?

3 **A** I have seen passport numbers.

4 **Q** Addresses?

5 **A** Addresses, yes.

6 **Q** Nationalities?

7 **A** Yes.

8 **Q** Dates of birth?

9 **A** Yes.

10 **Q** Among the people on the OFAC list, do you have an
11 understanding of how many of them are Americans living here in
12 the United States?

13 **A** Very few.

14 **Q** How few?

15 **A** I would say at most, 2 percent but probably under
16 1 percent of the parties on that list are U.S. -- and when I
17 say "U.S. persons," I don't just mean Americans living in the
18 United States, but U.S. citizens anywhere located, permanent
19 legal residents, U.S. companies.

20 **Q** So 98 to 99 percent just live overseas somewhere?

21 **A** That's my belief, yeah.

22 I just want to clarify that. We also run a sanctions
23 research blog and site called sanctionlaw.com. And several
24 years ago we actually did that statistical analysis, but that
25 was probably in 2013. And I reference the number being 98 to

1 99 percent. So that's where I'm getting that from.

2 MR. SOUMILAS: Thank you.

3 THE COURT: Cross-examination?

4 MR. LUCKMAN: Yes, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. LUCKMAN

7 Q Hello, Mr. Ferrari.

8 A Good morning.

9 Q We met earlier. My name is Bruce Luckman. I represent
10 TransUnion. I'm going to be asking you some questions, into
11 the microphone.

12 A Okay.

13 MR. LUCKMAN: Good?

14 THE REPORTER: (Nods head)

15 BY MR. LUCKMAN

16 Q You weren't retained by Mr. Ramirez to get him off the
17 OFAC list, were you?

18 A I was not.

19 Q Okay. And you weren't retained by Mr. Ramirez in any way
20 having to do with the transaction with Dublin Nissan in 2011,
21 were you?

22 A I was -- well, I guess it depends.

23 Q Having to get -- because in 2011, were you retained by
24 Mr. Ramirez?

25 A No, I was not.

1 Q Okay. So you weren't, in connection with that
2 transaction, literally.

3 A No.

4 Q Okay. And you said something earlier about when you
5 advise customers to add data, so, seeking to identify more or
6 less matches?

7 Do you want them to get more or less potential matches
8 when they do that?

9 A I want them to get less potential matches.

10 Q And that's so they can save money on their screening
11 process?

12 A Right. And so, also, they focus their resources on the
13 most likely potential actual matches.

14 Q Okay. Is there a percentage of hit rates that you
15 recommend that they try to attain?

16 A Um, I'm trying to think back through advice and opinion
17 letters we have given over the years.

18 There's not one that I recall offhand. There may have
19 been one that we have provided in the past.

20 Q Do you recall what that was?

21 A I do not recall.

22 Q A range? Is it 9 percent, 20 percent? One percent?

23 A I would say if you're getting 20 percent -- if 20 percent
24 of your transactions are being returned, that would be a high
25 rate.

1 Q What do you think would be a good rate?

2 A I really can't speculate, because that's not what I
3 prepared my testimony for. So I'm sorry.

4 Q Clients don't ask you that question?

5 A I probably have been provided that question in the past.
6 I don't have an answer for you, offhand, though, because -- I'm
7 sorry, but I just didn't prepare for that type of question
8 today.

9 Q Okay. And have you ever advised a client that they could
10 rely solely on interdiction software to make a decision?

11 A I have not, no.

12 Q What do you recommend that they do?

13 A Well, I recommend that they use a software as a first line
14 of defense, and then take those possible matches and run it
15 through what we call the "four-eyes review system," where
16 you'll have two different reviewers look at it, examine the
17 party, examine the information in the possession of the
18 institution, run it through due-diligence tools, for example,
19 like a Thomson Reuters World Check to try to see if there is
20 any other information on the party.

21 And then, if they still believe they have a match, they
22 would escalate that to management, or to -- some institutions
23 have what is called a Customer Acceptance Review Panel, a CARP,
24 and then there would be a final decision made on whether or not
25 they believe they have an actual match.

1 Q Now, you mentioned some names earlier. I'm going to get
2 them wrong, but I'll try. ATTUS or CSI, I think, was one.

3 A Yes.

4 Q Can you tell me what the differences are, if any, between
5 the interdiction software that they provided in 2011, let's say
6 at the time of this transaction, February 11, and what they
7 provide today?

8 A I can't -- again, that's something I didn't prepare my
9 opinion for today.

10 Q Do you know whether they added fields that the entities
11 search with, this interdiction software, meaning: Did they use
12 name in 2011 and use name and address in 2016?

13 Do you know?

14 A Again, I don't. And again, I apologize. That's not what
15 my testimony was supposed to be for. At least, to my
16 understanding.

17 Q And also, for MK Data, do you have any idea whether they
18 have changed their ability to search the OFAC list between,
19 say, February 2011 and today?

20 A I don't. And again, not something I looked at for this
21 case.

22 Q Is that anything you ever looked at for a client?

23 A As far as the historical changes of when capabilities were
24 added, and things of that nature?

25 Q No, I'm sorry. Keeping them current on what's available

1 to comply with the regulations.

2 **A** I have -- I have told clients in the past about different
3 screen softwares. But I usually let the financial institutions
4 make that decision for themselves.

5 If they ask me for a provider, I don't recommend one over
6 the other. Just like when I get a request for attorney
7 referrals, I'll give them two or three names and let them make
8 the decision themselves.

9 **Q** When you were answering Mr. Soumilas's questions about
10 recommending that your clients use two items of identifying
11 information, say, name and date of birth, that's what you would
12 currently recommend. Correct?

13 **A** That's what I would currently recommend. And I don't
14 recall a time when I was recommending anything else.

15 **Q** You don't recall back in 2011 whether you made that
16 recommendation or not?

17 **A** I don't recall.

18 **Q** Okay. You said to Mr. Soumilas that there are some
19 addresses on the OFAC list?

20 **A** Correct. Some -- some parties have addresses associated
21 with them.

22 **Q** I take it that law enforcement doesn't use that list to go
23 arrest people at American addresses?

24 **A** Not that I'm aware of. But what I would say about the
25 OFAC list, and this was where people get confused about it,

1 it's not a list of parties who have engaged necessarily in
2 criminal conduct. It is a list of parties who have engaged in
3 some type of activity which has presented a threat to U.S.
4 national security and foreign-policy interests. Whether or not
5 that activity is a violation of a U.S. criminal statute is a
6 separate issue.

7 **Q** Okay. But the answer would be: You are not aware of any
8 reliable American addresses on the list.

9 **A** I can't speculate as to whether or not they're reliable or
10 not. That's something I didn't prepare my opinion for.

11 **Q** Do you know of any American street addresses on the list?
12 Have you ever seen one, in all your years?

13 **A** I have seen American street addresses on the list. I
14 have. Again, and I would just note that there's been a few
15 famous cases where U.S.-based Islamic charities have had their
16 assets frozen because they were targeted.

17 **Q** How about individuals? We'll get to the entities, but
18 let's stick with individuals for a moment.

19 Are you aware of any individual who has an actual American
20 street address on the list?

21 **A** I'm aware of American citizens who are in the United
22 States and were targeted. I haven't reviewed the OFAC list
23 recently to determine if their actual address was included in
24 the identifying information. I can assume it was, but I
25 haven't reviewed that, for purposes of this opinion.

1 Q And with regard to dates of births, sir, they all -- are
2 all the individuals associated with a date of birth?

3 A I can't say -- I can't say that. I can't speculate to
4 that.

5 Q Do you have any idea what the percentage is of individuals
6 that are associated with a date of birth?

7 A I can't speculate as to that. Sorry.

8 Q Do you have any idea whether the dates of birth are in a
9 particular -- and I don't mean today, I mean back in 2011,
10 let's say -- where the dates of birth in a particular format,
11 meaning day-month-year, month-day-year, or any of them, were
12 they consistent?

13 A I don't recall. And again, this is something I didn't
14 prepare my opinion for. My opinion was pretty limited on
15 certain issues, and this was not one of them.

16 Q Do you know whether any of the dates of birth are simply a
17 year, or range of years?

18 A Again, something I didn't prepare this opinion for.

19 Q Okay.

20 A And I don't want to speculate.

21 Q Okay. And in 2011, do you recall ever suggesting or
22 advising a client to check dates of birth on the list?

23 A Do I ever, in those years?

24 Q Yes.

25 A I don't recall offhand, but we were providing advice to

1 financial institutions at those times. So I believe I would
2 have, but I can't recall one instance, offhand.

3 Q Okay. You talked a little bit about your practice. And
4 you said you have clients all over -- sounds like all over the
5 world.

6 A I do.

7 Q I take it that a certain percentage of them are entities
8 that want to do business in the United States, but they can't,
9 because they're on the list?

10 A I would say there are parties on the list that we
11 represent in seeking their removal from that list, whether it's
12 because they want to do business with the United States or for
13 some other reason -- maybe they just don't like being
14 identified as narco kingpin or an arms dealer -- then we do
15 represent those parties on the list, seeking their delisting.

16 Q What percentage of your practice is people or entities
17 that are already on the list that either want to get off or
18 want to get a license to do business in the United States?

19 A So, those are two completely separate things. I would say
20 the licensing falls under compliance, again. So that's about
21 40 percent.

22 Our SDN removal practice at the current time has grown to
23 be a rather large percentage, just because we've gotten an
24 influx of new clients, and -- but traditionally it's between a
25 third -- 35, maybe 40 percent, as well. And --

1 Q Do you -- go ahead.

2 A I was just going to say, the remaining 20 percent is just
3 a hodge-podge of civil enforcement or criminal enforcement
4 cases. But our two big areas are compliance and licensing, and
5 delisting.

6 Q Could you tell me, what's the distinction between
7 compliance and licensing? Could you describe what the two are?

8 A Sure. So, compliance is solely providing advice on, one,
9 whether or not you can engage in the transaction. Okay? So
10 Company X comes to us, and they say: We want to do business
11 with Iran; here's what the transaction will be; can we do it?
12 We will write an advisory opinion to say no. Or setting up
13 policies and procedures so that companies can make those
14 determinations on their own. That's where the screening and
15 that sort of thing comes in.

16 Licensing is where they've made a decision or they've come
17 to a conclusion that they cannot do the business, but they
18 still want to do it, so they seek specific permission from the
19 Office of Foreign Assets Control to engage in the transaction.

20 Q For that part of your practice, licensing and compliance,
21 or whichever order you put it in, can you tell me the
22 percentage that is compliance and the percentage that is
23 licensing?

24 A So of that -- you mean of that 40 percent?

25 Q Correct.

1 **A** I would say 75 percent is compliance, and then maybe
2 25 percent is license. Most people don't want to do business
3 with a blocked jurisdiction or blocked persons. And when they
4 hear they can't, that's good enough for them. They don't want
5 to go through with the business that bad, where they're willing
6 to spend the time, money and resources to get a license.

7 **Q** So we're not talking about a car dealer who wants to sell
8 a car. We're talking about some entity that wants to
9 potentially do business with an Iranian bank or business.

10 Correct?

11 **A** Well, I wouldn't just say to Iran, but it's for all
12 different types of transactions with all different types of
13 parties and different countries. So it could -- it could be
14 anything.

15 **Q** Well, the list is still a little bit of mystery, because
16 it's 7,000 entries. But on there, there are ships, correct?

17 **A** There are ships, yes.

18 **Q** And there are businesses?

19 **A** There are businesses.

20 **Q** Terrorist organizations?

21 **A** There are foreign terrorist organizations, yes.

22 **Q.** And I take it there's some, maybe, banks?

23 **A.** There are some banks on there, correct.

24 **Q.** And of the 75 percent of your business you were just
25 talking about, what percentage of it deals with -- let's move

1 the individuals to one side for a moment and just take the
2 number of entities, ships, banks, terrorist organizations,
3 Hamas, whatever they are, what percentage of your -- of that
4 75 percent is on that side of the ledger?

5 **A.** So we're talking about compliance for entities.

6 **Q.** Yes, exactly.

7 **A.** Historically or currently?

8 **Q.** Well, both.

9 **A.** So historically when we first started, we were obviously
10 -- I started as a solo practice and we built up. So years and
11 years and years ago in 2009 probably, maybe, when I -- also
12 when I was working at another firm, we dealt with a lot more
13 individuals. So it was maybe 50/50 back then, but now it's
14 almost exclusively companies and -- companies and vessels and
15 entities and organizations, as well.

16 **Q.** Okay. And you're representing American companies that
17 want to do business with the barred companies or the barred
18 companies that want to do business in America or a mix?

19 **A.** It's a mix. But I would say it's mostly U.S. companies or
20 foreign companies who are not designated who want to deal with
21 the barred companies.

22 **Q.** Okay.

23 **A.** I'm sorry.

24 **Q.** Go ahead.

25 **A.** We represent a number of multi-national corporations, so

1 they may have both U.S. branches or U.S. subsidiaries and they
2 may have shared back office support services between them. So
3 sometimes it's a matter of making sure that the U.S. party --
4 there's no compliance breached for the U.S. party's involvement
5 in the overall business of the multi national.

6 **Q.** Excellent. You said earlier you cannot identify banks
7 because of the attorney-client privilege and that in this
8 context or the context of your representation it would maybe
9 disclose something about them.

10 Am I correct, sir, that that's because those businesses
11 are looking to do business with an entity where there's a
12 heightened risk of violating OFAC?

13 **A.** It could be, or it could be a disclosure as to their
14 compliance practices or what they get help on.

15 **Q.** And that -- and they are getting help on how it would be
16 lawful to do business or get licensed to do business with an
17 entity that's otherwise barred?

18 **A.** Or they are getting licensed on compliance to make sure
19 they don't do business with parties that are barred or in an
20 embargoed jurisdiction.

21 **Q.** Or what?

22 **A.** An embargoed jurisdiction.

23 **Q.** Help me with that. What is an "embargoed jurisdiction"?

24 **A.** Sure. So in the realm of sanctions programs you have, I
25 would say, three main areas.

1 You have comprehensive trade embargoes, which target a
2 geographic regions. So, for example, Iran, Cuba, the Crimean
3 region of the Ukraine, Syria.

4 And then you have targeted-based sanctions programs, who
5 are actually identifying and targeting particular individuals,
6 entities and organizations and imposing a block on them.

7 And then you have sectoral sanctions, which is a fairly
8 new phenomenon, but that's where we target individuals and we
9 only place certain restrictions on dealings with them. And
10 that's become popular in the Russia sanctions context.

11 So when I say "embargoed jurisdictions," I'm referring to
12 that first category, which is the comprehensive trade ban
13 against certain geographical regions.

14 **Q.** And does that -- I'm sorry if I got this wrong, but does
15 that connect to your -- the gray listed entities where you're
16 not -- your clients are not only concerned about doing business
17 with the gray listed entity, but maybe doing business with the
18 owners of that entity?

19 **A.** That gray list would span across the different sanctions
20 program categories.

21 **Q.** Okay.

22 **A.** Because, for example, you could have an entity in a third
23 country that may -- you may believe is owned or controlled by
24 an Iranian entity, but not a designated Iranian entity, and so,
25 therefore, you have a comprehensive embargo type compliance

1 concern. Or you could have that same company in a third
2 country which you believe is owned or controlled by a foreign
3 narcotics trafficking kingpin entity. Or the same with the
4 sectoral sanctions designation.

5 So, really, it's a concern across the realm of different
6 sanctions.

7 **Q.** Understood. Understood. And I don't want to go through
8 all these, but I'm hoping to hit the one with Mayor Giuliani.

9 But I looked on Pacer for some cases that you had handled
10 and they -- you can correct me if I'm wrong, they appear to
11 be largely -- some are criminal, some are civil.

12 Without divulging any attorney-client privilege, of
13 course, could you just identify for me a couple of these.

14 There's a 2010 case *Christian Johnson*. Can you tell me
15 what was involved in that case?

16 **A.** *Christian Johnson* was a case that I had before I started
17 my practice that got carried over with me, because I told the
18 partner at the firm I worked at I would continue to work on it,
19 but that was just a purely federal criminal defense case.

20 **Q.** And did it involve OFAC?

21 **A.** It did not involve OFAC.

22 **Q.** Okay. And *Bryan Underwood*?

23 **A.** Bryan Underwood was charged with espionage, and that was a
24 case I got very early on in my career when -- and I don't know
25 if you've ever started your own practice, but when you start

1 your own practice, you kind of think the next client who comes
2 in could be the last client who comes in, so you take whatever
3 you can get. And so I took it, that espionage federal criminal
4 case, because it came to me and, quite frankly, I needed the
5 money.

6 Q. Understood. Understood. Hope he paid you.

7 Without giving me the details of the others, just tell me
8 if any are OFAC cases.

9 A. Sure.

10 Q. *Enyinnaya Udo?*

11 A. No. Tax case.

12 Q. *Omidreza Khademi?*

13 A. Yes. OFAC case.

14 Q. Okay. Tell us about that one, please?

15 A. Mr. Khademi was a foreign person. He was residing in the
16 UAE. He had UAE -- and this is all public record and that's
17 why I'm speaking freely about it.

18 He was residing in the UAE -- and he had purchased
19 computers from a company, I believe it was in Dallas, Texas,
20 and brought them to Dubai for re-export to Iran. And so that
21 was a violation of Iranian transactions regulations.

22 Q. Understood. *Zevallos versus Obama?*

23 A. Zevallos was a foreign narcotics trafficking kingpin, who
24 was designated on June 1st, 2004 as a tier one kingpin. He has
25 since 2005 been in jail in Peru, but he's been contesting his

1 OFAC designation ever since. And we brought suit against the
2 Treasury and the President -- and there is a specific reason
3 why the President was included -- to contest his continued
4 designation under the OFAC list.

5 Q. Understood.

6 A. On the OFAC list.

7 Q. *Okko Business PE?*

8 A. Okko Business was a Belarusian -- I'm sorry, not a
9 Belarusian. They were a Ukrainian -- I'm trying to find the
10 right word to characterize them, but they had owned gas
11 stations in the Ukrainian and they had participated in an oil
12 auction in Belarus that was organized and administered by a
13 party designated under the Belarus sanctions program.

14 And so they had remitted their funds in euro to
15 participate in that auction, but when they remitted from their
16 Ukrainian bank, it went through Citibank in London. So
17 Citibank is strange because some of their foreign operations
18 are actually branches versus subsidiaries, and so Citibank in
19 London was a foreign branch. They blocked the payments. And
20 as such, we applied for unblocking licenses from OFAC. OFAC
21 didn't grant them, so then we sued OFAC for that purpose.

22 Q. Understood. Well, I can't pronounce this. *J-O-U-M-A-A*
23 *versus Lew?*

24 A. Oh, Joumaa. Which Joumaa? There is a few of them.
25 Mouhammed?

1 Q. Anyone that involves OFAC.

2 A. Well, we filed a few suits. The Joumaa brothers were
3 parties in Lebanon who were designated under the Foreign
4 Narcotics Kingpin Designation Act who had been contesting their
5 designations. And so because OFAC, we felt, was unreasonably
6 delaying the decisions on those designations, we brought suit
7 under the Administrative Procedure Act against OFAC to get a
8 decision and they were removed on April 6 of 2016, I believe.

9 Q. Understood. And *Sulemane versus Lew*?

10 A. Sulemane is a tier one narcotics trafficker designated
11 under the Kingpin Act who has been designated since June 1st,
12 2010. And I handled the administrative reconsideration on that
13 case before OFAC. OFAC ultimately denied us in 2014 and,
14 therefore, we brought suit because we feel the decision was
15 arbitrary and capricious.

16 Q. Okay. You don't represent consumer reporting agencies?

17 A. I do not.

18 Q. And you don't represent insurance companies, do you?

19 A. I do.

20 Q. You do?

21 A. Yes. I have represented insurance companies.

22 Q. In connection with OFAC compliance?

23 A. Yes.

24 Q. And how do they get involved in OFAC?

25 A. Well, because if they are going to pay out a premium, they

1 need to make sure they are not paying it out to a party who is
2 either identified in an embargoed jurisdiction or the payment
3 is not going to the benefit of a party in the jurisdiction or a
4 designated party.

5 Q. Understood. Is it unlawful for a company to do business
6 with an individual and not check the OFAC list?

7 A. And not check the -- so the legality is speaking as to
8 whether or not they screened?

9 Q. For that insurance company to pay out the premium and not
10 do a -- you know, not screen the list?

11 A. So the USA Patriot Act requires screening by financial
12 institutions of terrorist lists, and that would include the
13 OFAC SDN list.

14 Q. That was my next question. So the U.S. Patriot Act does,
15 in fact, require that financial institutions check the list?

16 A. Yes.

17 Q. Okay. And you said that most -- most entities will start
18 with some soft- -- interdiction software?

19 A. Correct. From my understanding, yes.

20 Q. What do you mean by your understanding?

21 A. Well, because you said "most," and I don't have the entire
22 universe of data to say if it's most or --

23 Q. In your experience, most?

24 A. Most that I speak to, yes.

25 Q. Okay. One moment. Check with my colleague.

1 **A.** Sure.

2 (Discussion held off the record between/amongst defense
3 counsel.)

4 **Q.** I wasn't done.

5 Would you agree with me, sir, that when a false positive,
6 meaning a -- when a match comes up, that the due diligence
7 that's applied by an entity would potentially differ based on
8 the nature of the transaction?

9 **A.** Would it differ?

10 **Q.** Yes.

11 **A.** I would agree with that, yes. The due diligence, yes.

12 **Q.** And what do you mean -- by due diligence, what's your
13 understanding of that?

14 **A.** My understanding of due diligence is the review of
15 information on the customer to determine whether or not there
16 is any compliance risk in dealing with that party.

17 **Q.** So would you say that an entity that wants to transfer
18 funds to a bank that might be on the list would have a
19 different due diligence need than, say, someone opening a
20 credit card account?

21 **A.** I don't want to provide an opinion for that because that's
22 not what I prepared my opinion for. And I think that would be
23 highly speculative because I think it would depend a lot on the
24 different circumstances involved.

25 **Q.** Understood. So when you were saying earlier that

1 you would have -- that your clients might escalate to a couple
2 people to look at it and then maybe that would escalate
3 further, what sorts of transactions are you talking about?

4 **A.** It could be any type of transaction where there is a
5 sanction interest present or there's a belief that there is a
6 sanction interest present.

7 **Q.** Your clients, what sorts of -- without identifying the
8 clients, what sorts of transactions are they? Are they, for
9 example, opening a credit card account?

10 **A.** Could be, yes.

11 **Q.** So you represent banks that are issuing credit cards?

12 **A.** I do.

13 **Q.** Okay. And do you have -- do those banks have the capacity
14 to escalate to -- to individuals and then if they are not
15 satisfied, to escalate to a manager? That's what the
16 compliance regime is?

17 **A.** The banks that I represent, they do have those procedures
18 in place.

19 **Q.** Are those American banks or foreign banks?

20 **A.** Some of them are American. Some of them are foreign.

21 **Q.** What's the percentage?

22 **A.** I would say --

23 **Q.** American versus foreign?

24 **A.** Probably 40 percent American -- sorry. 40 percent
25 foreign, 60 percent American -- I'm sorry. 60 percent foreign,

1 40 percent American.

2 Q. Okay.

3 A. And I'm also viewing this not on the number necessarily of
4 different clients, but the amount of the billable hours that --
5 so the -- I'm looking at it from a perspective of how much time
6 do we actually spend working on foreign clients versus domestic
7 clients.

8 Q. Do you have a number? Putting aside billable hours, which
9 I know are reliable, but putting -- the number of foreign banks
10 you represent and the number of American banks you represent?

11 A. I don't offhand. I mean, we've represented hundreds of --
12 probably over a thousand different companies and parties at
13 this point. So I don't -- I don't have those numbers offhand.

14 Q. Do you have ongoing compliance responsibilities for any
15 particular banks, foreign or domestic?

16 A. We do.

17 Q. And how many is that?

18 A. I mean, I'd have to go through our client list and look at
19 it. We've represented lots of people.

20 Q. Okay.

21 MR. LUCKMAN: Your Honor, I'm finished. Thank you.

22 BY MR. LUCKMAN

23 Q. Thank you, Mr. Ferrari.

24 A. Thank you, sir.

25 THE COURT: Anything further?

1 **MR. SOUMILAS:** No.

2 **THE COURT:** No? All right. Thank you, Mr. Ferrari.

3 You are excused.

4 **THE WITNESS:** Thank you, your Honor.

5 (Witness excused.)

6 All right. Ladies and gentlemen, why don't we take our
7 20-minute morning break.

8 As always, please do not discuss the case. Thank you.

9 (Whereupon there was a recess in the proceedings

10 from 10:23 a.m. until 10:44 a.m.)

11 **MR. NEWMAN:** Could we have a few minutes to talk a
12 little bit about the schedule?

13 **THE COURT:** Okay.

14 **MR. NEWMAN:** So based on their witness list and we
15 have a lot of out-of-town witnesses, we have witnesses who made
16 flight arrangements, most of ours are not going to be here
17 until next week. So if they rest today --

18 **THE COURT:** We'll talk about it later.

19 (Jury enters the courtroom at 10:44 a.m.)

20 **THE COURT:** All right. Thank you, ladies and
21 gentlemen.

22 Plaintiff, are you prepared to call your next witness?

23 **MR. SOUMILAS:** Your Honor, we are. We have another
24 video at this point. It's a witness named Robert Lytle.

25

ROBERT LYTTLE,

called as a witness for the Plaintiff herein, testified via videotaped deposition played in open court, not reported.)

MR. SOUMILAS: Your Honor, that is all of the designations that plaintiff wishes to introduce. Thank you.

THE COURT: All right. We'll go to defendant's portion.

MR. NEWMAN: It's about an hour and five minutes, your Honor.

THE COURT: Okay.

(Videotape played in open court, not reported.)

THE COURT: Okay. All right. That concludes Mr. Lytle.

MR. NEWMAN: Your Honor, we move into evidence Exhibit 27 by stipulation.

THE COURT: All right. 27 admitted.

(Trial Exhibit 27 received in evidence)

THE COURT: Yes?

JUROR GARDNER: I need to use the restroom.

THE COURT: Yeah. We're going to break for lunch now.

JUROR GARDNER: Oh, okay.

THE COURT: Great. So let's take our 45-minute lunch and please do not discuss the case. Thank you.

(Jury exits the courtroom at 12:20 p.m.)

THE COURT: Okay. Did you want to discuss scheduling?

1 We have Mr. O'Connell.

2 **MR. NEWMAN:** Yes. And I understand Mr. O'Connell will
3 be finished today.

4 And then because of the witness list we received and
5 because we have out-of-town witnesses -- Ms. Prindes had to
6 arrange for child care. We had a stipulation so that she
7 didn't think she had to appear this week. We have a witness,
8 Mr. Turek, who is planning to travel on Monday.

9 What we would have this week are Mr. Walker, who is here;
10 the playback of Mr. Acharya, which is only, like, 15 minutes;
11 and Mr. Katz, who is scheduled to arrive on Friday.

12 **THE COURT:** Where is Mr. Katz coming from?

13 **MR. NEWMAN:** Mr. Katz is coming in from the Chicago
14 area, I believe.

15 **THE COURT:** He's TransUnion.

16 **MR. NEWMAN:** He's TransUnion, right.

17 And then on Monday we would have Dr. Cronshaw, who is from
18 near Albuquerque. Again, we made -- we were ready to have her
19 here and then we were told to push her off til next week. So
20 we actually have already moved her flight once.

21 We have Ms. Prindes, who is also going to be on Monday,
22 and she has a child care situation and she's already made those
23 arrangements. Actually, she's from the Chicago area. She's
24 actually flying to Arizona to drop her child off with friends
25 and then is flying here from there, and it's very difficult for

1 her.

2 **THE COURT:** What about Mr. Burns? Are you calling
3 him?

4 **MR. NEWMAN:** I think we're going to release Mr. Burns
5 because I think everything about that Dublin Nissan event came
6 in through Ms. Coito, so I think we would release him.

7 **THE COURT:** And Mr. Peter Turek?

8 **MR. NEWMAN:** And Mr. Peter Turek, he's scheduled to
9 come in on -- he's flying on Monday and he would be testifying
10 on Tuesday.

11 **THE COURT:** And is he employed by TransUnion?

12 **MR. NEWMAN:** He is a TransUnion employee.

13 And then we could -- we could at that point bring in our
14 expert, Mr. Sadie, on Tuesday. And, really, Tuesday would be a
15 pretty full day.

16 And then we --

17 **THE COURT:** I'm going just to stop you.

18 **MR. NEWMAN:** Yes, okay.

19 **THE COURT:** There are a lot of judges in this
20 courthouse, you would be out of luck. Completely out of luck.
21 Your witnesses aren't here. Fine. You rest. Done.

22 I'm willing to work with you, maybe. Like Friday, we'll
23 go dark. But we will have a full day tomorrow.

24 **MR. NEWMAN:** Sure.

25 **THE COURT:** So if somebody needs to get on a plane

1 from Chicago, it's not hard. It's a four-hour flight. They
2 will do that.

3 **MR. NEWMAN:** Mr. Katz is a former employee. He's not
4 a current employee. But we can ask him to --

5 **THE COURT:** What about Mr. Turek?

6 **MR. NEWMAN:** Mr. Turek --

7 **THE COURT:** Prindes, I understand. She has child care
8 issues.

9 **MR. NEWMAN:** The other possibility is we're dark
10 tomorrow for the parade and we go Friday.

11 **THE COURT:** Friday we were doing a short day. I don't
12 know. What does the plaintiff say?

13 **MR. FRANCIS:** Your Honor, we highly oppose any attempt
14 to delay this trial. I mean, we have all made arrangement with
15 child care and otherwise.

16 We think it would be prejudicial for the jury for there to
17 be a delay. The -- we worked very hard to get our case in
18 quickly and efficiently. We will rest today after
19 Mr. O'Connell. We do not see any basis for any delay by a half
20 a day, a day.

21 As your Honor just pointed out, these are corporate
22 representatives from Chicago. They can -- you know, if they
23 want to, they can play their depositions, if they gave
24 depositions before, but we oppose any delay in this trial.

25 **THE COURT:** Well, so Mr. Turek is TransUnion.

1 **MR. NEWMAN:** Correct.

2 **THE COURT:** He could be here tomorrow.

3 **MR. NEWMAN:** I don't know if he could be here
4 tomorrow.

5 **THE COURT:** Well --

6 **MR. NEWMAN:** I could check.

7 **THE COURT:** I'm open to the possibility of being dark
8 on Friday. We usually do. And to be honest, the weather is
9 gorgeous. Life is short. Life is short and since you're all
10 here. And, frankly, you know, the jury -- whatever, right?
11 But not tomorrow. We have a full day, a full day.

12 **MR. NEWMAN:** Okay. Let me spend some time during the
13 lunch break to get people on the phone and get plane flights
14 rejiggered.

15 **THE COURT:** Ms. Cronshaw can be here, whatever, but we
16 have a full day tomorrow.

17 **MR. FRANCIS:** Your Honor, we would also say that if
18 they want to have Mr. Sadie tomorrow, the expert, he can be
19 here, obviously. We could -- you know, they can put him and we
20 cross him.

21 **MR. NEWMAN:** And one possibility, I suppose, is --
22 would be to -- we would have to a look to see the deposition of
23 Mr. Katz, you know, if we could do him by read-in. That is
24 another possibility we could look at.

25 **THE COURT:** Fill your day tomorrow. I don't want you

1 to drag people out, but, I mean, you know...

2 **MR. NEWMAN:** I will fill the day tomorrow, your Honor.

3 **THE COURT:** You can let me know what's going on. I'm
4 open to and I think I would go dark on Friday. It's a shorter
5 day and, like I said, the weekend. The weather is actually
6 spectacular.

7 **MR. FRANCIS:** Your Honor, we're very well aware of
8 that. Every time we walk out of here, we --

9 **THE COURT:** You're all our guests. We want to
10 showcase the Bay Area.

11 **MR. FRANCIS:** It's beautiful.

12 **THE COURT:** So, but not tomorrow. The short day. So,
13 right. Get your ducks in a row and you can let us know.

14 **MR. NEWMAN:** Okay. That's what we'll do. Thank you,
15 your Honor.

16 **MR. FRANCIS:** Thank you, your Honor.

17 (Brief pause.)

18 **THE COURT:** Okay. So my law clerk just advised me
19 that BART is now announcing that anybody that wants to take
20 BART has to be on the trains by 7:00 a.m.

21 The reason Mr. Jain was late today was, of course, there
22 was a problem with BART. So now I am concerned, given the
23 parade, that BART, that we're going to be running into
24 problems.

25 So what I'm inclined to do, in light of that, is to go

1 dark tomorrow.

2 **MR. NEWMAN:** Thank you, your Honor.

3 **THE COURT:** All right? Okay. You can thank BART.

4 **MR. NEWMAN:** I thank the Warriors.

5 **THE COURT:** Thank the Warriors. And for that reason,
6 just because I think we're going to end up -- it's going to be
7 a real hassle for everything.

8 And Ms. Means is very excited about that. We have that
9 same problem.

10 **MR. NEWMAN:** And, your Honor, we will complete Walker,
11 Acharya and Katz on Friday, even though it's a short day, I
12 believe. They are not going to be spilling over until Monday.
13 And then we are back to our regular schedule and we will go
14 boom, boom, boom. And I think we will -- we will be ready to
15 rest on Wednesday, I think.

16 **THE COURT:** If not before.

17 **MR. NEWMAN:** Yes, possibly even before.

18 **THE COURT:** All right. So that is why, it's because
19 of the issues with transportation and BART that we will go dark
20 tomorrow.

21 **MR. FRANCIS:** I understand, your Honor.

22 **MR. NEWMAN:** Much appreciated, your Honor. Thank you.

23 (Whereupon at 12:28 p.m. proceedings were adjourned for
24 noon recess.)
25

P R O C E E D I N G S

JUNE 14, 2017

1:10 P.M.

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(Proceedings resumed pursuant to noon recess.)

THE COURT: All right. Welcome back, ladies and gentlemen. You may all be seated.

I want to advise you of a schedule change. We have been sort of monitoring things with the parade tomorrow and BART, and BART is now warning people that you have to get on BART by 7:00 a.m. They are expecting crowds. We have at least two of our jurors who take BART. So we're actually not going to have trial tomorrow. Actually, my whole staff takes BART as well -- you may be seated -- so we will just be dark tomorrow.

On Friday we will end by 1:30, as we said. We will not take a lunch break. But we will be dark tomorrow.

And, Ms. Rodriguez, you can go to the parade if you want.

JUROR RODRIGUEZ: No. I have to go to work.

THE COURT: You have work.

JUROR RODRIGUEZ: Yes, I'll be in my classroom.

THE COURT: Ahh, all right.

JUROR REINARTZ: Just don't tell our employers.

THE COURT: I will not tell your employers. As far as they are concerned, you were here.

JUROR RODRIGUEZ: Can you give us a note for tomorrow?

THE CLERK: I will just leave them.

1 **THE COURT:** She didn't say that.

2 Okay. All right. Is the plaintiff prepared to call their
3 next witness?

4 **MR. FRANCIS:** Yes, your Honor. Your Honor, plaintiff
5 calls Michael O'Connell.

6 And before Mr. O'Connell testifies, based upon your
7 Honor's rulings this morning and the stipulation reached
8 between the parties, we move into evidence Exhibits 34 and 35.

9 **THE COURT:** All right. 34 and 35 admitted.

10 (Trial Exhibits 34 and 35 received in evidence)

11 **MICHAEL O'CONNELL,**

12 called as a witness for the Plaintiff herein, having been duly
13 sworn, testified as follows:

14 **THE WITNESS:** I do.

15 **THE CLERK:** Can you please state your name and then
16 spell your last name for the record.

17 **THE WITNESS:** Sure. Michael O'Connell.
18 O, apostrophe, C-O-N-N-E-L-L.

19 **THE CLERK:** Thank you.

20 **DIRECT EXAMINATION**

21 **BY MR. FRANCIS**

22 **Q.** Good morning, Mr. O'Connell. My name is Jim Francis. We
23 haven't met before, but I am one of the counsel who represents
24 the class in this case that's been brought against TransUnion.

25 I want to begin with some basic questions about your

1 background. Am I correct that you are employed by TransUnion?

2 A. Yes.

3 Q. Okay. And what is your current position at the company?

4 A. Vice-president of Product Development.

5 Q. Okay. And that's a title that you have held for some
6 period of time, correct?

7 A. Correct.

8 Q. All right. And over 15 years, would you say?

9 A. Approximately, yes.

10 Q. Okay. Has anything changed about your job or your duties
11 and responsibilities at TransUnion since, say, 2013?

12 A. Yeah. I got a couple of new product categories that we
13 have been building within TransUnion.

14 Q. Okay. But other than that, your position is the same,
15 correct, as it was back in 2013?

16 A. Yeah. Just different product categories, some new
17 advancements we have.

18 Q. I got you. And would I be correct that you have been at
19 TransUnion, from what I calculate, over 30 years?

20 A. That's correct.

21 Q. And specifically I think you know that this case involves
22 the OFAC product, correct?

23 A. Correct.

24 Q. And am I correct that you actually were the one who was
25 responsible for rolling out TransUnion OFAC product?

1 **A.** That's right.

2 **Q.** Okay. And you did that -- when did that start, back in
3 2002?

4 **A.** Correct, yes.

5 **Q.** And when I say you were the one who did it, were you the
6 one who was primarily responsible for bringing the OFAC product
7 to the market?

8 **A.** Yes. For developing and launching in the market, yes.

9 **Q.** Okay. And prior to 2002 am I correct that TransUnion did
10 not sell that product?

11 **A.** That's correct.

12 **Q.** All right. And you know that you're appearing today not
13 in your individual capacity, but as a representative of
14 TransUnion, correct?

15 **A.** Yes. I understand that.

16 **Q.** And you gave a deposition in this case back in 2013; do
17 you recall that?

18 **A.** I do.

19 **Q.** And you testified in that case as a representative of
20 TransUnion, correct?

21 **A.** Yes.

22 **Q.** All right. So what I want to establish is given your role
23 in rolling out the OFAC product, would I be correct in stating
24 that you would be familiar with the matching logic that the
25 product used from the period, say, of 2002 through at least

1 2013?

2 **A.** That's correct.

3 **Q.** Okay. And were you involved in the company's decisions in
4 terms of where TransUnion would get its OFAC data from?

5 **A.** Yes.

6 **Q.** Okay. And were you involved in the company's decisions to
7 employ the match logic that TransUnion used in connection with
8 the OFAC product?

9 **A.** Yes.

10 **Q.** All right. And would you have been a person who would
11 have been involved in working with the company in response to
12 any legal compliance issues that related to the OFAC product
13 and any changes that might have been made?

14 **A.** Changes that would have been made, yes.

15 **Q.** Okay. So, if, for example, TransUnion was -- made a
16 change to OFAC in response to a case or a government inquiry,
17 you would have been involved in carrying out those changes,
18 correct?

19 **A.** Those that were related to our consumer relations activity
20 was a more specialized team, but the majority of them, yes.

21 **Q.** Okay. But am I correct that you're not on the Board of
22 Directors of TransUnion?

23 **A.** No, I'm not.

24 **Q.** Okay. And you report to somebody else at TransUnion?

25 **A.** That's correct.

1 Q. Who do you report to?

2 A. Senior vice-president of product.

3 Q. Okay. And am I correct that you're not an attorney?

4 A. That's correct.

5 Q. And you're not -- do you know who Denise Norgle is?

6 A. I do.

7 Q. And Denise Norgle, for at least some point, was
8 TransUnion's general counsel, correct?

9 A. Yes.

10 Q. Okay. So you wouldn't have been involved, correct me if
11 I'm wrong, in any decisions that TransUnion's legal department
12 made with regard to compliance issues related to OFAC, correct?

13 A. That's correct.

14 Q. All right. Now, one of the things that you were
15 designated to testify about -- not only at your deposition, but
16 you were also offered as a witness in this case by TransUnion's
17 counsel in its opening as somebody who was familiar with the
18 match logic, is that right?

19 A. That's right.

20 Q. All right. So I want to ask you about TransUnion's match
21 logic for OFAC, and let's start in 2002. Okay?

22 A. Okay.

23 Q. Am I correct that the match logic that TransUnion utilized
24 for OFAC was what you call name match?

25 A. I'm sorry. Ask me that again?

1 Q. Yeah. TransUnion's -- the match logic that TransUnion
2 used in connection with rolling out OFAC was a name match
3 logic, correct?

4 A. The software that we purchased from Accuity, yes.

5 Q. And what that means is that the only identifiers that
6 would have been queried in terms of returning a search or a hit
7 would have been name, correct?

8 A. That's right.

9 Q. All right. So when you rolled it out, date of birth was
10 not built into that match logic, correct?

11 A. That's right.

12 Q. Address was not built into that match logic, correct?

13 A. That's correct.

14 Q. Passport, for example, if it existed, was not built into
15 that match logic, correct?

16 A. That's correct.

17 Q. No other identifying information other than the name,
18 correct?

19 A. That's correct.

20 Q. All right. Now, you were asked at your deposition about
21 whether there was a juxtaposition of names within the match
22 logic. Can you explain what that means?

23 A. Yeah. That is where we have name reversals, where you
24 don't necessarily know what the order of the names being
25 provided, either on the OFAC file or on the input, and being

1 able to account for somebody making a mistake and reversing
2 those names on the input.

3 Q. Right. So, for example, the match logic for the OFAC
4 product would deliver a hit if there was a match to the first
5 and last name or if the first and last name were reversed,
6 correct?

7 A. Yes. The potential match would involve any -- those two
8 names regardless of which order it was in, yes.

9 Q. So Sergio Ramirez would match not only to Sergio Ramirez.
10 It would also match to Ramirez Sergio, correct?

11 A. That's correct.

12 Q. Now, am I correct that TransUnion sells other products
13 other than OFAC? I think that's pretty obvious, right?

14 A. Yes.

15 Q. You sell basic credit reports to lenders, right?

16 A. That's right.

17 Q. And one of the things that you sell is public records?

18 A. Yes.

19 Q. And can you just expand upon what a public record is?

20 MR. LUCKMAN: Objection. Relevance.

21 THE COURT: Overruled.

22 A. Some public records could come from any source that is
23 made publicly available through -- whether it be property
24 information, civil judgment information, tax lien information.
25 Things of that nature is typically referred to as public record

1 items.

2 **BY MR. FRANCIS**

3 **Q.** Right. So in connection with a regular credit report,
4 there could be a public records section that could include a
5 bankruptcy, for example?

6 **A.** That's correct.

7 **Q.** Or a tax lean or a judgment, something like that, correct?

8 **A.** That's correct.

9 **Q.** And those records come from a state or local government or
10 federal government, correct?

11 **A.** Or the companies that gather that information from those
12 courthouses, yes.

13 **Q.** And am I correct that TransUnion does not use name match
14 logic for public records?

15 **A.** That's correct.

16 **Q.** And am I correct that TransUnion does not use name match
17 only logic for any other product?

18 **A.** Not to my recollection, no.

19 **Q.** Okay. And would you agree with me that it would be
20 inappropriate for TransUnion to use name match logic only for
21 public records?

22 **A.** No. It depends on what the -- no, I wouldn't agree. I
23 think it depends on what the information is being collected for
24 and used for.

25 **Q.** Sir, you gave a deposition back in December of 2013, I

1 think, correct?

2 A. Yes.

3 Q. Okay.

4 MR. FRANCIS: Your Honor, may I approach?

5 THE COURT: You may.

6 (Whereupon document was tendered to the witness.)

7 THE COURT: Do you have an extra copy?

8 (Whereupon document was tendered to the Court.)

9 BY MR. FRANCIS

10 Q. Sir, what I would like you to do is turn to Page 60 of
11 your deposition?

12 A. Six zero?

13 Q. Six zero. And specifically Line 5.

14 (Witness complied.)

15 Q. When you gave your deposition back in December of 2013,
16 you swore to tell the truth, correct?

17 A. Yes.

18 Q. And you gave an oath in that case -- or that time,
19 correct?

20 A. Yes.

21 Q. Now, at Page 60 I asked you -- or I didn't ask you,
22 Mr. Gorsky of our firm asked you:

23 "QUESTION: And you agree that name matching only would be
24 inappropriate for every other piece of credit data that
25 appears on a consumer's TransUnion credit report."

1 Do you see my question there?

2 A. I do.

3 Q. Would you read your answer?

4 A. It says:

5 "ANSWER:Yes."

6 Q. Okay. So --

7 A. That's not the question you asked me, though, just a
8 minute ago.

9 Q. Okay, okay. But I think we can both agree that for
10 general credit reports and general credit data TransUnion does
11 not use name match only, correct?

12 A. That's correct.

13 MR. FRANCIS: Mr. Reeser, would you please put up
14 Exhibit 1? And specifically the top half portion.

15 (Document displayed)

16 BY MR. FRANCIS

17 Q. Mr. O'Connell, I want to explore with a real-life example
18 what the name match only logic was that TransUnion used in
19 connection with OFAC by using a credit report that was entered
20 into evidence here as Exhibit 1 in this case, okay?

21 So if you look at this report, would you agree with me
22 that the subject input name is Ramirez, last name Sergio L.

23 A. Yes.

24 Q. Okay. And you've seen TransUnion credit reports before,
25 correct?

1 **A.** I have.

2 **Q.** Okay. And the top information here is information which
3 pertains to Mr. Ramirez, correct?

4 **A.** That's information contained on our credit file.

5 **Q.** Right. So this information would have come from
6 TransUnion's database, correct?

7 **A.** Our credit database.

8 **Q.** Your credit database. And so the data that we see here --
9 current address; former address, Fremont, California; Redwood
10 City; Redwood City; Social Security Number, 4070; date of
11 birth, 4/76; employer and address; and former employer and
12 address -- am I correct that all of that data would have been
13 in TransUnion's credit database at the time this report was
14 generated?

15 **A.** Yes.

16 **MR. FRANCIS:** Now, Mr. Reeser would you please pull up
17 the bottom section of the report -- or the middle section,
18 excuse me.

19 (Document displayed)

20 **BY MR. FRANCIS**

21 **Q.** Mr. O'Connell, you're familiar with the way OFAC Advisor
22 Alert messages would have appeared on a TransUnion credit
23 report from 2002 through 2013, correct?

24 **A.** Yes.

25 **Q.** And if you look at -- let's pick one of the -- one of the

1 records. The first record relates to a Ramirez Aguirre, Sergio
2 Humberto. Do you see that?

3 A. I do.

4 Q. Now, based upon the input data that you saw from
5 Mr. Ramirez, would this record match according to TransUnion's
6 name matching logic back in 2011?

7 A. Because two of the names, if they appeared on the OFAC
8 file, matched two of those, yes.

9 Q. Okay. So it doesn't matter that the last name here might
10 be Aguirre, is that correct?

11 A. As long as it matches to the two names, that's correct.

12 Q. Right, okay. And it doesn't matter that there is a
13 Humberto there, correct?

14 A. Correct.

15 Q. And it doesn't matter that above, when we looked at the
16 data that TransUnion had in its database, that neither the name
17 Aguirre or Humberto was there, correct?

18 A. It didn't matter what was on the --

19 Q. In terms of the match. It would match regardless of the
20 fact that neither of those names was in TransUnion's database?

21 A. Yeah. A credit database is not included in any of the
22 matching comparisons. It's strictly the input information
23 provided by the end-user compared to the OFAC listing. There
24 is no interpretation or translation that occurs between that.

25 Q. Right. So as you look at this first OFAC Advisor Alert,

1 do you know whether or not the name Aguirre here is the last
2 name?

3 A. I don't.

4 Q. You don't know. And do you know whether the name Humberto
5 is the first, middle or last name?

6 A. I don't know.

7 Q. Okay. So to be clear, it doesn't matter in terms of the
8 match, as long as two of those names would match with Sergio or
9 Ramirez, it would deliver a hit, correct?

10 A. Correct.

11 Q. All right. And that was consistent with TransUnion's
12 match logic for the time period 2011, correct?

13 A. That is correct.

14 Q. All right. And it's also the case that it was -- that
15 would return a hit even after 2011, correct?

16 A. A potential match, yes.

17 Q. Okay. What I'm saying, in terms of just the name logic
18 alone, am I correct that that logic that you just outlined,
19 that was -- that was in place at least up through December of
20 2013, correct?

21 A. Yes.

22 Q. Okay. Didn't change in 2012, correct?

23 A. We made a number of changes to the name prior to that,
24 related to, like, middle initial matching, to eliminate -- the
25 Accuity software had a lot of other different matching rules

1 that existed that we didn't feel comfortable with.

2 So, for example, if there was a middle initial, a single
3 letter, we wouldn't allow that to count as one of the names.
4 There was also logic where there was just a single name, a
5 single word name. So we eliminated a lot of those types of
6 rules. So that's -- those things were changed.

7 **Q.** Are you saying that you weren't using name match only
8 logic in 2013?

9 **A.** No, I'm not saying that. I'm explaining the type of name
10 matching logic we used.

11 **Q.** Okay.

12 **MR. FRANCIS:** Mr. Reeser, would you please put up
13 Plaintiff's Exhibit 8, and specifically Page 82?

14 (Document displayed)

15 **BY MR. FRANCIS**

16 **Q.** Okay. So I just want to make sure we understand how this
17 match logic works.

18 This is a page, Mr. O'Connell, from the actual -- the
19 class list in this case. There is a class list that contains
20 the names of over 8,000 people. This is a page that refers to
21 strictly Maria Hernandez's. Do you see that?

22 **A.** No. Actually, I'm sorry, I don't.

23 **MR. FRANCIS:** Okay. Mr. Reeser, can you blow that
24 up?

25

1 **BY MR. FRANCIS**

2 **Q.** Actually, if you want, if you look in your binder -- you
3 should have a binder in front, the binder right there. It's
4 actually Exhibit 8, Page 82.

5 **A.** Okay.

6 **Q.** Okay?

7 **MR. FRANCIS:** And, Mr. Reeser, if you could zero in --
8 yeah. Highlight a little bit, if you can, the top part of the
9 names.

10 (Document displayed)

11 **BY MR. FRANCIS**

12 **Q.** Okay. As I said, this is the class list in this case and
13 this just pertains to the name Maria Hernandez.

14 So would I be correct in stating that at least during the
15 time period in question, 2011, if there was an OFAC record with
16 the name Maria and Hernandez, all of the people who were listed
17 on this page would be returned as a hit or a potential hit by
18 TransUnion?

19 **A.** That's correct.

20 **Q.** Okay. Thank you.

21 **MR. FRANCIS:** You can take it down.

22 (Document removed from display.)

23 **MR. FRANCIS:** And, Mr. Reeser, if you would also now
24 put up Page 2 of Exhibit 23?

25 (Document displayed)

1 **BY MR. FRANCIS**

2 **Q.** And if you'll go to your binder to Exhibit 23?

3 (Witness complied)

4 **A.** Yes.

5 **Q.** So, Mr. O'Connell, I will represent to you that Exhibit 23
6 is an excerpt of the government's Office of Foreign Assets
7 Control, the Treasury's OFAC list. Do you have that in front
8 of you?

9 **A.** I do.

10 **Q.** Okay. So what I'd like you to take a look at --

11 **MR. FRANCIS:** And if we can blow this up, Mr. Reeser,
12 right here?

13 (Document enlarged.)

14 **BY MR. FRANCIS**

15 **Q.** All right. So one of the names on the list -- and I'm
16 just picking this at random -- is a Fernandez Montero Marco
17 Jose. Do you see that?

18 **A.** I see that up there, yes.

19 **Q.** Okay. So if somebody had any of those two names, am I
20 correct that TransUnion would deliver a hit -- or the credit
21 report would deliver a hit for that person?

22 **A.** Not the credit report. The OFAC service would deliver the
23 potential match, yes.

24 **Q.** Right. So the hit -- a hit would be returned in
25 connection with any of those two names, correct?

1 **A.** Yes.

2 **Q.** Okay. Now, just finishing up with the OFAC matching
3 logic. Am I correct that beyond running the person's name
4 through the Accuity software, TransUnion would not do anything
5 further with regard to confirming whether or not that
6 individual was a match on the list?

7 **A.** We had -- we had them -- we had Accuity do a number of
8 things, including removing aliases and synonyms that they would
9 have added to their software. So there was a number of things
10 that we would do to make that software more effective.

11 **Q.** Are you saying that beyond -- once the name was delivered
12 back to TransUnion, that TransUnion would take additional steps
13 to see whether there were additional identifiers in the file?

14 **A.** No. We removed some of the names that were in the file
15 that Accuity had added.

16 **Q.** You would do that separate and apart from Accuity
17 delivering the data?

18 **A.** No. I'm describing Accuity's process of removing names
19 from the data that they provided us that that software
20 utilized.

21 **Q.** Okay. But in terms of the name coming back after Accuity
22 did whatever it did, TransUnion would not do anything further
23 to confirm whether or not a person was actually on the OFAC
24 list, is that correct?

25 **A.** That is correct.

1 Q. Okay. It wouldn't perform any type of independent
2 investigation or any independent analysis of -- to see whether
3 or not the person was actually on the list, is that correct?

4 A. That's correct. Our understanding of it was the end-user,
5 that was their responsibility, to ensure that they investigated
6 with the individual that they were engaged with, whatever
7 transaction that they were working with.

8 Q. Okay. So it was TransUnion's view, at least through 2013,
9 that it was not its role to figure out whether somebody was
10 actually on the list or not, correct?

11 A. We weren't engaged with -- correct. We weren't engaged
12 with the consumer that was a part of the transaction. And our
13 interpretation of the OFAC regulations indicated that once they
14 look up a name on the list -- and whether they did it manually
15 on a document like this and found the name -- the end-user was
16 expected to then compare all the information that they had
17 about their -- the individual they had engaged and compare it
18 to the information on the OFAC list, make a determination if
19 they needed to take any additional steps.

20 Q. All right. Now, am I correct that at some point
21 TransUnion was notified by the Department of Treasury of its
22 concern about the number of false positives?

23 A. I've gotten different Treasury Departments that have
24 contacted us with different views. The OCC is a Treasury
25 Department that expressed concern with us actually having the

1 synonym files removed. So that OCC group was part of the
2 Treasury Department. Some of the language that they audited,
3 financial institutions not allowing broader match rules, was
4 communicated as a concern that we didn't deliver enough
5 potential matches.

6 **Q.** Right. But I'm specifically referring to a notice from
7 the Department of Treasury to TransUnion in which the
8 Department of Treasury expressed that it was concerned about
9 the level of false positives. Are you aware of that?

10 **A.** I'm aware of the letter that was sent to our legal
11 department, yes.

12 **Q.** Okay. And just so we're on the same page, a false
13 positive is a -- is somebody who was actually not on the list,
14 but who has been returned through a hit, correct?

15 **A.** As a potential match, yes.

16 **Q.** All right.

17 **MR. FRANCIS:** Mr. Reeser, would you please put up
18 Exhibit 34, please?

19 (Document displayed)

20 **BY MR. FRANCIS**

21 **Q.** Mr. O'Connell, at your deposition you were asked about
22 this letter the Treasury sent to TransUnion, correct?

23 **A.** Yes.

24 **Q.** And you can see at the top --

25 **MR. FRANCIS:** I don't know if, Mr. Reeser, you can

1 highlight it so we can see the date?

2 (Document enlarged.)

3 **BY MR. FRANCIS**

4 **Q.** So this is the letter that we were just talking about from
5 the Department of Treasury to TransUnion. It's dated
6 October 27th, 2010.

7 **MR. FRANCIS:** And would you please highlight the first
8 sentence or two?

9 (Document enlarged.)

10 **BY MR. FRANCIS**

11 **Q.** And I'll read it since it might be difficult for the
12 members of the jury to see. It begins with:

13 "Since our meeting with you in July 2007 and
14 subsequent correspondence of May 27, 2008, the Office of
15 Foreign Assets Control continues to hear from credit
16 bureau clients and individual consumers who have been
17 adversely affected by screening products related to OFAC
18 targets that are associated with consumer credit reports.

19 "While OFAC appreciates your firm attempts to provide
20 tools to help ensure that persons on OFAC's Specially
21 Designated Nationals and Blocked Persons List do not
22 access the U.S. financial system, it is obviously
23 important that such tools provide accurate information in
24 an understandable manner."

25 Do you see that?

1 **A.** I do.

2 **Q.** Okay. And the next sentence is what I was asking you
3 about earlier.

4 **MR. FRANCIS:** Can you expand that?

5 (Document enlarged.)

6 **BY MR. FRANCIS**

7 **Q.** (As read)

8 "We remained concerned that name matching services
9 used by credit bureaus to inform clients about potential
10 dealings with persons on the SDN list may be creating
11 unnecessary confusion."

12 Do you see that?

13 **A.** I do.

14 **Q.** Okay. The first sentence references a meeting in July of
15 2007. Do you know anything about that meeting?

16 **A.** I don't know.

17 **Q.** Okay. And it also references correspondence of May 27th,
18 2008. Do you know anything about that?

19 **A.** I don't.

20 **Q.** Okay. Do you know whether or not Treasury was advising
21 TransUnion back at that time that it was concerned about false
22 positives?

23 **A.** I don't know.

24 **Q.** Okay. And would you agree with me that at least as of
25 October of 2010, the U.S. Department of Treasury is telling

1 TransUnion they were concerned about the rate of false
2 positives?

3 **A.** Yes. This letter indicated some concerns, yes.

4 **MR. FRANCIS:** And would you please, Mr. Reeser, just
5 continue down for the last part of that first paragraph?

6 (Document enlarged.)

7 **MR. FRANCIS:** Yes.

8 **BY MR. FRANCIS**

9 **Q.** It goes on to read that:

10 "An interdiction product that does not include
11 rudimentary checks to avoid false positive reporting can
12 create more confusion than clarity and cause harm to
13 innocent consumers. This is particularly worrisome when
14 interdiction products are disseminated broadly in
15 conjunction with credit reports."

16 Do you see that?

17 **A.** I do.

18 **Q.** Okay. Do you know what is meant by the term "interdiction
19 product"?

20 **A.** Yes.

21 **Q.** Is the OFAC product that TransUnion sold and what I asked
22 you about earlier, is that an interdiction product?

23 **A.** Yes. It's -- the Accuity software is an interdiction
24 product and at the time was the market leading user of that
25 software.

1 So I understand the rudimentary aspect of that because
2 this is the same software that was used more than any other
3 software in the financial services industry. So it was used
4 exactly the same.

5 **Q.** And would you agree with me that TransUnion's OFAC product
6 was disseminated in connection with credit reports? Just like
7 this last sentences references.

8 **A.** It can be delivered at the same time as a credit report,
9 yes.

10 **Q.** Okay.

11 **MR. FRANCIS:** And then just the second paragraph
12 please? Then we can move on.

13 (Document displayed)

14 **BY MR. FRANCIS**

15 **Q.** All right. The paragraph references a recent appellate
16 court decision and then the last sentence reads:

17 "We are particularly interested in procedures or
18 policies you have established to mitigate the impact of
19 false positives on credit applicants."

20 Do you see that?

21 **A.** I do.

22 **Q.** All right. And at some point TransUnion responded to that
23 letter from Treasury, correct?

24 **A.** Correct.

25 **Q.** In fact, it was a letter that was sent by TransUnion's

1 general counsel, Ms. Norgle, back to the Treasury, correct?

2 A. Yes.

3 MR. FRANCIS: Mr. Reeser, would you please pull up
4 Exhibit 35?

5 Now, can you highlight the top portion of that so we can
6 see the date, please? That's fine.

7 (Document displayed)

8 BY MR. FRANCIS

9 Q. So the date of this letter is February 7, 2011. Do you
10 disagree with me that that's when Ms. Norgle responded to
11 Treasury's first letter?

12 A. I do not.

13 Q. And you work with Ms. Norgle, or did you at some point,
14 correct?

15 A. I have worked with her, yes.

16 Q. Okay. And in connection with OFAC, you worked with her,
17 correct?

18 A. Yes.

19 Q. And then she responds --

20 MR. FRANCIS: Can we see the first paragraph blown up
21 as well?

22 (Document enlarged.)

23 BY MR. FRANCIS

24 Q. She responds: This letter -- and I'll paraphrase for the
25 sake of time.

1 "This letter is TransUnion's response to your letter
2 of October 27, 2010.

3 "Like you" -- if you go further below -- "TransUnion
4 recognizes the importance of balancing the important goal
5 of blocking access to the U.S. financial system by persons
6 on the SDN list against the equally important goal of
7 minimizing the potential for inconvenience or adverse
8 impact to a consumer."

9 After February 7th of 2011, am I correct that TransUnion
10 continued to use the name matching logic?

11 **A.** That's correct.

12 **Q.** Am I correct that at least after February of 2011 and up
13 through 2013, when you testified in this case, TransUnion never
14 began using dates of birth in connection with the OFAC product?

15 **A.** We never put in it production, no.

16 **Q.** Okay. And am I correct that TransUnion, after receiving
17 this letter from -- receiving the OFAC letter from Treasury,
18 never began using addresses to help screen or reduce false
19 positives?

20 **A.** That's correct.

21 **Q.** Okay. And at no point after February of 2011 and up
22 through December of 2013 did TransUnion ever use another vendor
23 for OFAC compliance, correct?

24 **A.** We did not.

25 **Q.** Okay. And at no point after receiving the letter from

1 Treasury and responding -- and TransUnion responding back in
2 February of 2011, did TransUnion consider stopping selling the
3 sale of OFAC data, is that correct?

4 A. That's correct.

5 Q. All right. And, sir, you would agree with me that there
6 is no law or requirement of any sort that requires TransUnion
7 to sell the OFAC product, is that correct?

8 A. TransUnion or any other company, yes.

9 Q. Correct. So you can just stop selling it if you wanted
10 to, correct?

11 A. Yes.

12 Q. And at no point after February of 2011 did TransUnion ever
13 consider bringing the OFAC list in its own database and
14 creating its own product for sale in connection with a credit
15 report, correct?

16 A. We did consider it.

17 Q. You didn't do it though, correct?

18 A. Couldn't, no.

19 Q. Okay. Is it your testimony that TransUnion could not
20 import the OFAC database into a separate database?

21 A. We could not accurately match the file or build the
22 software and the delivery tools that Accuity had built in their
23 software. We had looked at it several times. Technically we
24 did not have the capabilities at the time to do that.

25 Q. And at any time did you develop the capability to develop

1 your own OFAC product?

2 **A.** We did.

3 **Q.** Okay. But not up through 2013, correct?

4 **A.** No. In 2015, 2016, we had new capabilities.

5 **Q.** Okay. And you had no limitations, am I correct, on
6 importing the OFAC list into a database maintained by
7 TransUnion, correct?

8 **A.** Just copying the file?

9 **Q.** Yes, or a routine feed. Copying the file like Accuity got
10 the file.

11 **A.** A routine feed, no, we did not have the ability to do
12 that.

13 **Q.** Okay. And is it your testimony that you had no ability to
14 actually get the OFAC list into a separate database?

15 **A.** Not one that we could production wise, no.

16 **Q.** Okay. At any point did you consider, let's try another
17 vendor?

18 **A.** We would have, if Accuity hadn't told us they were
19 actually going to build that version of the software that would
20 provide those enhancements to us. So when they had committed
21 to us to make that software available, we didn't see the need
22 to try to pull out that software and replace it with another
23 that did similar things.

24 **Q.** But as of the time that you testified in this case in
25 2013, you were still using the same match logic that was

1 employed in connection with Mr. Ramirez's report, correct?

2 **A.** With the other changes that I had mentioned already.

3 **Q.** What changes subsequent to Mr. Ramirez's report did you
4 employ?

5 **A.** We employed the removal of the Synonyms file so that we
6 couldn't match on name variations and the extent of different
7 name variations that the Accuity product regularly offered in
8 the marketplace.

9 **Q.** And for an example, when you say "Synonyms," you mean if a
10 name were Cortes, C-O-R-T-E-S, previous to that change that
11 would match to Cortez, C-O-R-T-E-Z, correct?

12 **A.** That's correct. By removing that information, it would no
13 longer generate a potential --

14 **Q.** Right. And you made that change to Synonyms, correct?

15 **A.** Yes.

16 **Q.** All right. Subsequent to February of 2011 and up through
17 2013 what other exchanges did you make?

18 **A.** We continued to look at other name logic assumptions and
19 we analyzed a lot of different matching logics. We had a
20 number of different teams that looked at different criteria and
21 matching criteria to determine if we could bring down the
22 number of potential hits without exposing the risk of allowing
23 true potential hits to be delivered.

24 **Q.** Sir, isn't it true that as of December of 2013, you
25 employed no additional matching criteria other than name?

1 **A.** Since then?

2 **Q.** As of 2013 --

3 **A.** Yes.

4 **Q.** -- and from 2011 isn't it true you didn't employ any other
5 matching criteria other than name?

6 **A.** The matching criteria, yes, that's true.

7 **Q.** Okay. Now, am I correct that TransUnion at some point did
8 look at methods for reducing false positives?

9 **A.** Yes. We had a number of research efforts that looked at
10 different criteria and options, yes.

11 **Q.** And through that research you had did discover that there
12 were ways that you could reduce the number of false positives,
13 correct?

14 **A.** Not with putting at risk significantly allowing more true
15 potential hits.

16 **Q.** That wasn't my question. The research that you had done
17 indicated that there were ways that you could have reduced the
18 number of false positives, correct?

19 **A.** Yes.

20 **Q.** Okay. And, for example, one of the things that you
21 considered was using a 10-year range for date of birth,
22 correct?

23 **A.** Yes.

24 **Q.** And what that would have meant was if the date of birth
25 that was in the OFAC file was greater than 10 years of

1 difference than what was in the consumer's file, that would not
2 deliver a hit, correct?

3 A. Yes.

4 Q. That was one of the things you looked at?

5 A. Yes, yes.

6 Q. Okay. And one of the other things that you looked at was
7 removing hits where there wasn't an exact match of all of the
8 names, correct?

9 A. Yes.

10 Q. All right. And, in fact, you had -- you had research that
11 you had conducted indicated that you could get the rate of
12 false positives down to zero percent, is that correct?

13 A. If you just didn't deliver any hits, yes, that's true.

14 Q. Okay. And in terms of just using date of birth, right,
15 aren't I correct that about 80 percent of the OFAC records
16 contain a date of birth?

17 A. I think that's a close approximation, yes.

18 Q. Okay. So would I be correct, there was no reason that
19 where a date of birth existed within the OFAC record, that
20 TransUnion couldn't have designed a program which would cross
21 reference to see if that date of birth was there and it didn't
22 match and exclude that as a hit. You could have done that if
23 you wanted to, correct?

24 A. No. Not at the time we could not.

25 Q. Are you telling -- are you telling us that once the hit

1 came back into TransUnion's database from the Accuity software,
2 you could not run an additional filter to screen out any dates
3 of birth that didn't match with the consumer's file?

4 **A.** At the time, at that period of time, no, we could not.

5 **Q.** And you're saying at the time of 2011, correct?

6 **A.** That's right.

7 **Q.** 2012?

8 **A.** That's right.

9 **Q.** 2013?

10 **A.** 2013 is when we were able to start doing analysis where we
11 had some technology people take a look at the criteria with the
12 date of births and be able to use some of the newer softwares
13 and tools that we had.

14 Prior to that, the challenges what the government filed
15 was all that information that you see on the OFAC record didn't
16 really have standard formatting to it. It kind of was all
17 around. And what happened is the date of births themselves
18 were in 10 to 15 different formats, including ranges of years.
19 So there wasn't a consistent format for a date of birth to
20 match to. Nor did we have the software and capabilities to
21 perform that kind of a match at that time.

22 In 2013 we did then have more technical capabilities and
23 Accuity continued to delay their deployment of their software.
24 So we started planning how we could technically go about
25 building that software around the top of Accuity, which we

1 eventually were able to figure out with some of our best
2 technology people. But prior to then, it was not possible for
3 us to do.

4 **Q.** When you say it's not possible, are you saying that it
5 wasn't possible for you to build a separate database for the
6 data that came in from the OFAC record?

7 **A.** Having the database is just one small piece of being able
8 to productionalize a product.

9 **Q.** Are you telling us that you couldn't have imported the
10 data from OFAC and then had your system, as it does with other
11 credit reports, look to see whether or not there is a different
12 date of birth in the file that is now downloaded into its own
13 system and cross reference that with what's in the consumer's
14 file? You couldn't do that?

15 **A.** No, we could not.

16 **Q.** Is TransUnion one of the big three credit bureaus in the
17 world?

18 **A.** We are.

19 **Q.** Uh-huh. Okay. You mentioned 2013. But just to be clear,
20 as of December of 2013, you still had not employed any other
21 match criteria other than name, correct?

22 **A.** Correct.

23 **Q.** All right. Now, would you agree with me that TransUnion's
24 customers believe that when they get a report back that
25 includes OFAC data, that that data is accurate that it gets

1 from TransUnion?

2 **A.** They believe that it was fit for use with the OFAC
3 regulation. In fact, customers expected us to be delivering
4 more potential matches.

5 **Q.** Sir, do you remember being asked that question at your
6 deposition, about what your customers expected?

7 **A.** Yes.

8 **Q.** Would you please turn to Page 34 of your deposition, Lines
9 1 through 10?

10 **MR. FRANCIS:** And could you, Mr. Reeser, please put up
11 excerpt six?

12 (Document displayed)

13 **A.** I'm sorry. What page was that?

14 **BY MR. FRANCIS**

15 **Q.** 34. Now, at your deposition you were asked this question:

16 **"QUESTION:**To ask you the question more practically, do
17 your clients have some expectation that the possible
18 matches that TransUnion provides in response to an OFAC
19 add-on has some reasonable basis that it may, in fact, be
20 true?"

21 And there is an objection. And your answer is what?

22 **A.** (As read)

23 **"ANSWER:**Generally, yes."

24 **Q.** Okay. So your clients aren't getting OFAC data from
25 TransUnion thinking: Oh, this doesn't mean anything. It's not

1 accurate. Right? They expect it to be accurate?

2 A. They expect it to be a potential match to a name in the
3 OFAC list that they would then screen.

4 Q. Okay.

5 A. That's what they would expect.

6 Q. Just a few more things, Mr. O'Connell.

7 As of December 2013 when you testified in this case, am I
8 correct that you had no data that confirmed that any of the
9 name matches that TransUnion had ever sold to a customer was
10 actually a person on the OFAC list?

11 A. It would not know that, no.

12 Q. You had no data at all?

13 A. No.

14 Q. That would indicate that one of the reports and one of the
15 hits that TransUnion sold or delivered was actually a hit of
16 somebody on the OFAC list, correct?

17 A. That's correct.

18 Q. I have no further questions.

19 THE COURT: Mr. Newman?

20 MR. NEWMAN: Mr. O'Connell, do you need some water?

21 THE WITNESS: Yes, actually. Thank you.

22 MR. NEWMAN: Oh, you've got some right there.

23 THE WITNESS: Yes, I'm good.

24 MR. NEWMAN: Are you good?

25 THE WITNESS: Yes.

1 **MR. NEWMAN:** Okay.

2 **CROSS EXAMINATION**

3 **BY MR. NEWMAN**

4 **Q.** Mr. O'Connell, why don't you know if you ever caught a
5 terrorist?

6 **A.** Financial institutions aren't going to tell us if they
7 had -- had any of that kind of an engagement or -- that's just
8 not something that they would let us know about.

9 **Q.** Okay.

10 **MR. NEWMAN:** Can we please see Exhibit 43, which was
11 previously introduced?

12 And can you please zoom in on the line about Sergio
13 Ramirez?

14 (Document displayed)

15 **BY MR. NEWMAN**

16 **Q.** You used the term "input name" previously. What does
17 "input name" mean?

18 **A.** The name supplied to us by the end-user that's performing
19 the search. So whatever information they have about the
20 consumer that they send to us to do the searches for.

21 **Q.** And how does the end-user get the information for the
22 input name?

23 **A.** Directly from the consumer themselves.

24 **Q.** And what is the input name in this document?

25 **A.** Sergio Ramirez.

1 **MR. NEWMAN:** Can we see Exhibit 34, please? You can
2 put down 43 and just give me -- give me 34.

3 And if you can zoom in on the language "rudimentary
4 checks," please.

5 Can you highlight the, "an interdiction product that does
6 not include rudimentary checks." A little lower. A little
7 lower. Almost there. Almost there. There you go.

8 Thank you.

9 (Document displayed)

10 **BY MR. NEWMAN**

11 **Q.** Okay. Now, we -- we heard some testimony earlier today
12 from a witness from Accuity who talked about a rules feature on
13 the Accuity product. Do you know what that rules feature is?

14 **A.** Yes, I do.

15 **Q.** And if you had used the Accuity product straight off the
16 rack without any modifications via the rules feature, what sort
17 of hit rate would you have seen?

18 **A.** My recollection, it would probably be just slightly under
19 about five percent overall.

20 **Q.** Did TransUnion in the period in between 2007 and 2010
21 employ the rules feature?

22 **A.** Yeah. We used it for a couple of different things I had
23 mentioned. Where a lot of the software would use the middle
24 initial, just a single letter as counting as one of the name
25 matches, so we didn't allow that. So you would put a rule in

1 the software to not allow that to generate a match.

2 They had rules around -- there was a lot of single names
3 in there that would actually generate a match if it was used in
4 the product.

5 There were other things, like vessel names and things like
6 that, that could also be similar to a consumer name. We
7 eliminated all those types of features that are a normal part
8 of the software.

9 Q. So if you didn't use the rules feature at all, would you
10 consider that to be a rudimentary check?

11 A. I think it's more than rudimentary.

12 Q. But using the rules feature do you believe you met that --
13 at least that rudimentary check standard?

14 A. Yes, I do.

15 MR. NEWMAN: Please put the document down.

16 (Document removed from display.)

17 BY MR. NEWMAN

18 Q. And by using that rules feature, were you able to reduce
19 the hit rate from five percent to something else?

20 A. Yes. To less than one percent, closer to a half a
21 percent.

22 MR. NEWMAN: And if we could see Exhibit 35? And if
23 you could -- blow it up a little bit more?

24 (Document displayed)

25

1 **BY MR. NEWMAN**

2 **Q.** And was the purpose of this letter to explain to OFAC the
3 things that TransUnion was doing in response to the Cortez
4 decision?

5 **A.** Yes.

6 **Q.** And after OFAC received that letter, did they communicate
7 further with TransUnion to say: It's not good enough, do it
8 different?

9 **A.** No.

10 **Q.** Okay.

11 **MR. NEWMAN:** You can take that down, please.

12 (Document removed from display.)

13 **BY MR. NEWMAN**

14 **Q.** And, in fact, you testified earlier that you were getting
15 contrary messages from the OCC, correct?

16 **A.** Yes. The OCC is the group that actually goes into the
17 financial institutions and audits their compliance with the
18 OFAC regulations. So the OCC examiners go in and review their
19 procedures and take a look at what they are doing.

20 And we were getting correspondence from our clients, even
21 giving us the name of their local OCC examiner, to call and
22 explain why we were delivering so few potential hits on there.
23 So a number of clients were very concerned that we weren't
24 delivering enough.

25 **Q.** Is the OCC also a federal government agency?

1 **A.** It's part of the Treasury Department.

2 **Q.** And so in a pushing match between the OCC and the OFAC,
3 who wins in that pushing match?

4 **MR. FRANCIS:** Objection, your Honor.

5 **THE COURT:** Sustained.

6 **BY MR. NEWMAN**

7 **Q.** Mr. O'Connell, when did you begin working nor TransUnion?

8 **A.** 1985.

9 **Q.** What was your first job with the company?

10 **A.** I worked on getting data from financial institutions into
11 our credit database. I also managed some of our early consumer
12 relation activities, local activities.

13 **Q.** What year was that?

14 **A.** 1985.

15 **Q.** What sort of --

16 **A.** Thanks for making me repeat that.

17 **Q.** Sorry.

18 (Laughter.)

19 **Q.** Did you have a cell phone in 1985?

20 **A.** No.

21 **Q.** What kinds of technology did you use in your job at
22 TransUnion in 1985?

23 **A.** Well, a lot of the filing we did, we had people that would
24 do nothing but write out index cards, and print things out on
25 these dot matrix printers that would chug along, and attach it

1 to the index card, put it in filing cabinets.

2 There would be a lot of green bar paper. Green bar paper
3 is long green stripes on it where all the computer information
4 would be on there that I would have to read through to check
5 the accuracy of the data being reported.

6 **Q.** How has the technology you and TransUnion have used
7 changed over the years?

8 **A.** That's a long list. Just the ability to migrate off of
9 the mainframe environments into an open systems area was a huge
10 technology leap for us. And the different software that we had
11 and data management tools that we had progressed and developed
12 was immensely more sophisticated and fast.

13 **Q.** What are some of the recent technological developments in
14 terms of how TransUnion goes about its business?

15 **A.** Well, we've created a lot of big data environments. So
16 we -- by moving off the mainframe, which is an extremely
17 difficult task to completely eliminate mainframe computers from
18 our business and have it just open systems software on the
19 server based and all the different big data management tools,
20 we can host larger and larger sets of data and be able to
21 process that data with dramatically faster results for
22 ourselves and for our customers.

23 **Q.** How rapid has the pace of technological change been since
24 2011?

25 **A.** Massive.

1 Q. What are the things you have been able to achieve since
2 2011?

3 A. Well, one of the things that we've done and one of the
4 product categories I'm responsible for now is the ability to
5 on-board many other types of data besides our traditional
6 credit data, which all our systems were structured around and
7 really couldn't do anything with any other kind of data.

8 So now we bring on other types of data that can be used to
9 credit risk consumers that wouldn't have been able to before.
10 So alternative data sets. So consumers that don't have a
11 credit card, an auto loan, a mortgage, can then be risk
12 assessed and approved for credit --

13 Q. Did --

14 A. -- as a product family.

15 Q. I didn't mean to interrupt you. You were still going?

16 A. The only other, the big technology is our data warehousing
17 capabilities and business intelligence data visualization
18 softwares where we can -- we can store 400 billion rows of data
19 and put data visualization tools on top to give our customers
20 realtime access to high level market insights and trends that
21 are going on in their business.

22 Q. The technologies you've just described, how do they affect
23 consumers?

24 A. Well, the alternative data is a huge thing for consumers
25 that didn't have traditional credit information. So either

1 young people trying to establish credit for the first time that
2 hasn't gotten a credit card or an auto loan, immigrants that
3 have yet to get a credit card or be able to be risk assessed by
4 a financial institutions, so all those people. The products
5 that we're offering enable consumers to get access to credit
6 they couldn't have before.

7 **Q.** Has TransUnion won any recent awards relating to its focus
8 on technological innovation?

9 **MR. FRANCIS:** Objection, your Honor.

10 **THE COURT:** Overruled.

11 **A.** Yeah. There has been several. So the first one is our
12 Spark Initiative, which is the mainframe migration that I
13 talked about, the ability to get off of those massive main
14 frames. We won some awards around the Spark Initiative.

15 And then our Shape Environment is our business
16 intelligence platform that hosts all this data so that it gives
17 realtime access to analytic tools and for ourselves and for our
18 customers to be more responsive to the market.

19 **Q.** In terms of technology, how does TransUnion's performance
20 compare to its competitors?

21 **A.** We believe we're -- we're leading. We're innovators now
22 in leading the market.

23 **Q.** Now, let's go back specifically to OFAC and to the year
24 2002.

25 **A.** Yes.

1 Q. Why did TransUnion select Accuity as its software vendor?

2 A. Because of the struggles that we had trying to figure out
3 how to on-board and productionalize different types of
4 datasets. We wanted to ensure that we had the right type of
5 service that our customers needed. So we evaluated who -- the
6 market leading providers of that software. Accuity was the
7 most widely-used software by financial institutions at the
8 time.

9 So we felt confident that using their software would
10 provide our customers the best experience and the best way to
11 minimize any challenges they had in deploying that in the
12 market.

13 Q. Did you expect that you would be getting a perfect
14 product?

15 A. I didn't expect it to be anything other than fit for what
16 that objective was, and they were considered the market leader
17 at the time.

18 Q. So even if it wasn't perfect, was it the best that was out
19 there?

20 A. It was the best that was out there to our assessment.

21 Q. Now, at some time in 2010 did you learn of the appellate
22 decision in *Cortez*, the decision by the Appeals Court, you
23 know, out in Philadelphia?

24 A. Yes.

25 Q. What did you learn of that decision?

1 **A.** That we wanted to -- we needed to treat it more like
2 consumer report information, where we could disclose it to
3 consumers, give them the opportunity to dispute that
4 information and then have us remove their name from getting
5 those alerts.

6 Things like changing it to be a potential match to make it
7 even more clear to the end-users, that this is strictly a
8 potential match.

9 And then we also pursued other types of analysis to see
10 how we could further reduce those false positives while still
11 making the product meet the objectives of the regulations.

12 **Q.** Did TransUnion appeal the *Cortez* decision to the Supreme
13 Court?

14 **A.** No.

15 **Q.** When you heard about the *Cortez* decision, what did you
16 want to do?

17 **A.** I was looking at all the different analysis that they were
18 doing and the different name matching rules and things of that
19 nature.

20 One of the things that I identified was a Synonyms list
21 that Accuity typically created, name variations of names on the
22 list. And we felt like it was important for us to ensure that
23 we were just matching those names to the names that were
24 provided by the Treasury Department and not any other derived
25 values that Accuity came up with with different name

1 variations.

2 Q. Will you please turn in your book to what's been
3 previously identified as Exhibit 14?

4 (Witness complied)

5 A. Yes.

6 Q. What is Exhibit 14?

7 A. It's an email string associated with some conversations
8 about getting those synonyms off of the database.

9 Q. And who would these emails?

10 A. Well, it started with my instruction to Accuity that
11 directed them to remove those from the data feeds that was
12 running in the software.

13 MR. NEWMAN: I offer 14 into evidence, your Honor.

14 MR. FRANCIS: No objection.

15 THE COURT: 14 admitted.

16 (Trial Exhibit 14 received in evidence)

17 MR. NEWMAN: Can we please put 14 up?

18 And can we go to the very bottom? And we'll sort of work
19 our way up chronologically from the bottom of the chain as we
20 go through.

21 So could you please find the email that has the date
22 January 31, 2011 8:42 a.m.?

23 (Document displayed)

24 BY MR. NEWMAN

25 Q. And, actually, who is Daniel Dwyer?

1 **A.** He was our representative at Accuity at the time.

2 **Q.** Go to the following page. "Dan" -- and let's wait to see
3 what you said to Dan.

4 **MR. NEWMAN:** Next page, please. Page 5 of the
5 exhibit. And could you zoom in on -- there you go.

6 Thank you.

7 (Document displayed)

8 **BY MR. NEWMAN**

9 **Q.** What did you tell Dan?

10 **A.** It was really documenting our conversation where I was
11 advised by our technical team that Accuity had resisted their
12 attempts to work with them to get the -- get those names off
13 the database.

14 So I called Dan and we had a discussion and I insisted
15 that that was something that they were required to do for us.
16 He eventually agreed and this email was to memorialize that
17 conversation.

18 **Q.** Did your desire to get Synonyms off, did that have
19 anything to do with Ms. Cortez?

20 **A.** Well, certainly it did in the respect that as we're
21 looking at different ways, Cortez -- the example of Cortez was
22 an example of a potential match delivered because of that
23 synonym name, because of a different letter in the last name.

24 So we felt like that was the appropriate thing to do,
25 given that that was an example of a synonym match.

1 Q. Did your pushing Accuity to drop the Synonyms file, did
2 that make you a popular person with Accuity?

3 A. No. They -- they preferred not. It was not part of their
4 offering at the time.

5 Q. What reasons did they give you for not wanting to do it?

6 A. They felt like it was compromising the objective of the
7 regulation where we would reduce those potential alerts to what
8 they felt was a dangerous level. And they felt the regulations
9 required matching to more and more of those name variations.

10 Q. Why do you even need to consult with them? Why couldn't
11 you just make an adjustment with the rules feature on the
12 product?

13 A. That wasn't available in their rules feature.

14 Q. They -- what did they need to do to get rid of that
15 Synonyms table?

16 A. So they had to create a special process on the dataset
17 that they created and sent to us to remove those names from the
18 data file that was sent into the software that did the
19 matching.

20 Q. Did any of TransUnion's lawyers tell you to go to Accuity
21 and make them drop the Synonyms file?

22 A. No.

23 Q. Who made that decision?

24 A. I did.

25 Q. Why?

1 **A.** For the reasons we just talked about. It was the right
2 thing to do and, certainly, it would reduce the false positives
3 and we felt like we wanted to have a higher standard than all
4 the other OFAC interdiction products in the market. So we had
5 the lowest -- to my knowledge, we had the lowest false positive
6 rate of any OFAC software in the market.

7 **Q.** So this email we have been looking at, this is January 31.

8 **MR. NEWMAN:** Could you go up to the next email in the
9 chain, which is February 8. And zoom in on February 8, please?

10 (Document displayed)

11 **BY MR. NEWMAN**

12 **Q.** (As read)

13 "Dan, can you confirm we have begun to receive the
14 file refresh without Synonyms and will be configured this
15 way going forward."

16 Why did you have to send this other email a week later?

17 **A.** I just needed to stay on them to make sure they were
18 accomplishing what we had agreed to.

19 **Q.** And did they eventually come around?

20 **A.** Yes, they did.

21 **MR. NEWMAN:** And if you could go to the very first
22 page of the exhibit, you will see there is some data here. And
23 if you'll zoom in on that, please?

24 (Document displayed)

25

1 BY MR. NEWMAN

2 Q. Is this data that shows hit rates even before you
3 eliminated Synonyms?

4 A. Yeah. So these were occurring during that period of time
5 where we were removing those Synonym files.

6 Q. And what was the impact on the hit rate from the
7 elimination of Synonyms?

8 A. From my recollection, it was approximately 20 percent.

9 Q. Twenty percent reduction?

10 A. Yes.

11 Q. And how did that 20 percent reduction affect consumers?

12 A. Well, there were fewer potential alerts. In the majority
13 of cases if the end-user is doing what they are expected to do
14 with those reviews, it should be invisible to the consumer in
15 almost all cases.

16 Q. Can you please turn to 48 in your book? What's previously
17 been marked as Trial Exhibit 48?

18 (Witness complied)

19 A. Yes.

20 Q. What is Trial Exhibit 48?

21 A. That was the exchange that I mentioned where our
22 technology team was working with Accuity. When I instructed
23 our technology team to work with Accuity to get the names
24 removed, our technology team engaged with the Accuity
25 technology people and this was an email directing -- basically

1 informing me that they were resisting that.

2 **MR. LUCKMAN:** I offer 48 into evidence.

3 **MR. FRANCIS:** No objection.

4 **THE COURT:** 48 admitted.

5 (Trial Exhibit 48 received in evidence.)

6 **MR. NEWMAN:** Could you please zoom in on the lower
7 email in the chain?

8 (Document displayed)

9 **BY MR. NEWMAN**

10 **Q.** Who is Mark Roethel?

11 **A.** He was the technology lead that I worked with.

12 **Q.** And who is Derek Frame?

13 **A.** His boss.

14 **Q.** And who is Oliver Loy?

15 **A.** He's a project manager in our technology group.

16 **Q.** And who is Colleen Gill?

17 **A.** She was a product manager that worked for me.

18 **Q.** Did all these people agree with the decision to push back
19 against Accuity to drop the Synonyms file?

20 **A.** Yes.

21 **Q.** And why was it necessary for you to get involved directly
22 with Accuity instead of just having the tactical people deal
23 with it?

24 **A.** Well, they had tried, but Accuity had basically told them
25 it wasn't an option, so I had to escalate it.

1 Q. Now, you've had some questions earlier about date of
2 birth. Now, do you know what a stop descriptor is?

3 A. Yes.

4 Q. And what would have happened if Accuity had created a stop
5 descriptor based on date of birth?

6 A. My understanding of the way it worked is that anybody that
7 had that date of birth. Whereas, the name would have gotten a
8 potential match delivered.

9 Q. So something that took date of birth into account would
10 need to use a different kind of technology, correct?

11 A. Yes.

12 Q. And is that called a post screen?

13 A. That's what we developed from a term standpoint, yes.

14 Q. Okay. And when did you first begin thinking about, is
15 there a way we can somehow build date of birth into our process
16 to reduce the hit rate further?

17 A. There were two things that we did in parallel. The first
18 one was engage with Accuity, similar to the conversation I had
19 around the Synonyms. We had requested that they add some date
20 of birth matching to the software that they provided in the
21 marketplace; that they had informed us that they were actually
22 working on that software and it would have been available for
23 us later in that year.

24 The other thing is we had our -- some of our technology
25 people do research to analyze what would it take -- what would

1 the rules even be, and then to have the technology people then
2 try to figure out, is that something that we can even
3 productionalize and deploy.

4 Q I'm sorry; are you finished?

5 A Yes; sorry.

6 Q In 2010 and 2011, was date of birth always present on the
7 OFAC list?

8 A Not always, no.

9 Q And in 2010 and 2011, would TransUnion always receive date
10 of birth as part of the input from the end user?

11 A I believe it was about half the time.

12 Q And what were some of the issues with the quality of the
13 date of birth data on the OFAC list, itself, even in those
14 circumstances where there was some data?

15 A Back then, the OFAC file had formatting. There was no
16 consistent, like, common delimited data structures that you can
17 clearly identify pieces of information in that file in a
18 consistent way.

19 Also, the way they represented a date of birth in the
20 file, there was ten to 15 different ways. It might say: Circa
21 1952. It might say: Between 1968 and 1972. It could have
22 traditional date-of-birth formats.

23 So, it was very difficult to try to standardize how that
24 information was represented on the file.

25 Q In 2012 and later, has OFAC, itself, made any changes to

1 how the records date of birth on the list?

2 **A** Yes. The technology people have been more comfortable.
3 The consistency of the information in those formats seemed to
4 have gotten better, and the way that they represented
5 information in that format, over time, got better.

6 **Q** So you didn't have the technological ability on your end
7 in 2010 and 2011 to do something on date of birth on your own.
8 But did Accuity promise to give you a solution?

9 **A** Yeah. They had committed that they were working on a new
10 version of their software. One of the elements being a
11 date-of-birth comparison match, and looking at other
12 information that might be present in the OFAC file. They said
13 that was in development. And that we would expect that later
14 that year, in 2011.

15 **Q** Was that called Compliance Link?

16 **A** Yes. I think that was the brand name they came out with,
17 yeah.

18 **Q** And when did Accuity promise to deliver Compliance Link to
19 you by the end of 2011? Do you remember when they made that
20 promise?

21 **A** It was early in 2011, when we were having the same
22 conversations on the Synonym file and other activities. So it
23 was around that same period. I don't remember the exact date.

24 **Q** Did Accuity actually deliver Compliance Link to you in
25 2011 to consider?

1 **A** Not in 2011, no.

2 **Q** When did they actually deliver it?

3 **A** In 2013.

4 **Q** When you received it, did you test it?

5 **A** Yes, we did.

6 **Q** What was the nature of the testing you performed on
7 Compliance Link?

8 **A** We were -- we ran sample off -- manually ran transactions
9 through that software. We took a look at the different rules
10 in that software.

11 We assessed that it was not really appropriate for us,
12 because it invoked a lot of different fuzzy matching rules that
13 was not -- it didn't just have a date of birth where I could
14 just say: Give me the date of birth; if it's a mismatch, just
15 suppress that record from being delivered.

16 It had all these other elements to it that we believed, in
17 our assessment, that would result in a higher potential hit
18 rate if we were to deploy that software.

19 **Q** You used the term "fuzzy match." What does that mean?

20 **A** It's kind of point scoring based on a lot of different
21 elements in there. So you would have to set up different
22 points.

23 So it wasn't something where you could say: We want an
24 exact match on name. We wanted to make sure that if it didn't
25 meet the date-of-birth match criteria, that it would be

1 suppressed. We wanted it more straightforward from a matching
2 standpoint.

3 Where, this, it would have been difficult to explain why
4 one record matched and another one didn't because of the point
5 scoring and matching rules that they had built into that
6 software.

7 **Q** Would picking up Compliance Link with that fuzzy matching
8 feature, would that have undone some of the benefits for
9 consumers you achieved through forcing them to drop the Synonym
10 file?

11 **A** The potential hit rate would have definitely gone up
12 substantially.

13 **Q** So what did you do when you realized that Compliance Link
14 would not work?

15 **A** So based on that parallel effort that we were doing,
16 analyzing, we had come up with some manual rules that would
17 reduce that match rate further. Then we had some of our best
18 technology people figuring out how to be able to
19 productionalize that.

20 So once we eliminated the Compliance Link product from
21 being a viable option for us, then we initiated a technology
22 product to build our own post -- post qualification. Because
23 at that point, our ability to on-board data in a
24 productionalized way and build matching algorithms in our
25 online delivery environment, we figured out a way to do it.

1 Q And when did you get that implemented?

2 A In 2014.

3 Q How is it working?

4 A Very good.

5 Q Could you please turn to Exhibit 19 in your book, what's
6 been previously marked as Trial Exhibit 19.

7 (Request complied with by the Witness)

8 A Yes.

9 Q What is Exhibit 19?

10 (Witness examines document)

11 A It's -- looks like an email exchange from some of our
12 technology folks, analyzing and trying to figure out how to
13 deploy, build software to do that data on-boarding and matching
14 activities that I talked about. And the challenges that they
15 were having trying to figure that out.

16 MR. NEWMAN: Your Honor, I offer 19.

17 MR. FRANCIS: No objection, Your Honor.

18 THE COURT: 19, admitted.

19 (Trial Exhibit 19 received in evidence.)

20 (Document displayed)

21 MR. NEWMAN: Can we zoom in on the part at the bottom
22 where it says "AGAIN FOR DOB."

23 (Document displayed)

24 BY MR. NEWMAN

25 Q What does this signify to you, Mr. O'Connell?

1 **A** That is just an example of what I was talking about
2 earlier, with all the different forms that date of birth could
3 be referred to in an OFAC record. And their ability to try to
4 build a program to take what we had on our input, which was a
5 very standard formatted date-of-birth information coming in to
6 us, and then accommodate for all these different types of date
7 of births as they might be represented on the OFAC file.

8 **Q** And did you ever -- were you ever denied the financial
9 resources you needed to develop this date of birth post
10 screening?

11 **A** No. Not at all.

12 **Q** So if I were to say to you: TransUnion delayed
13 implementing a date-of-birth post screen because it placed
14 profits over people, would that be a true statement or a false
15 statement?

16 **A** No. That's -- in fact, the people listed in this email,
17 Greg Munger, Ian, those are some of our best technology people
18 that are brought in on our most important things, to try to
19 figure out.

20 **Q** Can you please turn to Exhibit 49 in your book.

21 (Request complied with by the Witness)

22 **Q** What is Exhibit 49?

23 **A** This is an email related to some client concerns about the
24 reduction in our potential match rates.

25 **Q** And who, who wrote these emails?

1 **A** There's several. It all initiated with one of our
2 clients, from their compliance group that was going through an
3 OCC audit, and expressing concern that their OCC auditor was
4 concerned about the lack of name variations that we were
5 matching to, and the lack of doing those matches to name
6 variations.

7 **MR. NEWMAN:** Your Honor, I offer 49 into evidence.

8 **MR. FRANCIS:** No objection.

9 **THE COURT:** 49, admitted.

10 (Trial Exhibit 49 received in evidence.)

11 (Document displayed)

12 **MR. NEWMAN:** And can we go to the very bottom email in
13 the chain, please.

14 (Document displayed)

15 **MR. NEWMAN:** And could you zoom in on the Bernie
16 Miskin piece of it in the middle?

17 (Document displayed)

18 **BY MR. NEWMAN**

19 **Q** Says (As read):

20 "For your reference, the following is the contact information
21 for our OCC examiner:

22 "Bernie Miskin

23 "National Bank Examiner

24 "Northern Pennsylvania/Washington, D.C. Field Office."

25 Is this the incident with the OCC field examiner you

1 testified about earlier?

2 **A** Yes

3 **Q** About how OCC is pushing one way, OFAC is pushing the
4 other way?

5 **A** Yes, that's right.

6 **Q** And this document is after this complaint from OCC that
7 you're delivering too few matches, this is after that letter
8 that OFAC sent to Ms. Norgle. Right?

9 **A** Yes.

10 **Q** So, why not just undo it? Why not do what the OCC says?
11 You know, it's the latest word from the federal government.
12 Why not just undo that work?

13 **A** That wasn't the right thing for us to do at the time, I
14 think. We -- we wanted to be the product with the lowest
15 potential match rate in the market, so we wanted to keep that
16 where it was. Or lower.

17 **Q** If we could, let's shift to a different topic. You talked
18 a little bit about how you expect the Name Screen product to be
19 used.

20 How is that communicated to TransUnion end users?

21 **A** Well, there's a number of ways. We have -- we take FAQ
22 information from the Treasury's own website about what their
23 expected processes are, what they should be doing. For our
24 clients, we provide that FAQ.

25 We also put it in our contracts that the client signed

1 about the ways not only that they should use, but what they
2 shouldn't be doing with that service, in the agreements that
3 they signed.

4 **Q** You said "OFAC FAQ." What is that?

5 **A** Frequently Asked Questions document, to ensure that we
6 have done everything we can to communicate to the users of the
7 product what their -- what the expectations are, what the
8 processes are to manage that service.

9 **Q** Is that FAQ made publicly available in some fashion?

10 **A** It is on the Treasury Department's website.

11 **Q** Can you please turn to Exhibit 74 in your book.

12 **A** I don't have 74.

13 (Off-the-Record discussion between counsel)

14 **BY MR. NEWMAN**

15 **Q** Here, use mine.

16 **A** Okay.

17 **Q** Oh, we have one.

18 **MR. NEWMAN:** May I hand this to the witness?

19 **THE COURT:** You may.

20 **THE WITNESS:** Struggling with this a bit. I'm sorry;
21 what number?

22 **BY MR. NEWMAN**

23 **Q** Exhibit 74.

24 (Request complied with by the Witness)

25 **A** Okay.

1 Q What is Exhibit 74?

2 A It's the FAQ document.

3 Q Published by?

4 A We provide it to our clients, but it's sourced from the
5 Treasury Department website.

6 MR. NEWMAN: Your Honor, I offer 74 into evidence.

7 MR. FRANCIS: No objection.

8 THE COURT: 74, admitted.

9 (Trial Exhibit 74 received in evidence.)

10 (Document displayed)

11 BY MR. NEWMAN

12 Q Could you please turn to Page 11 of the document.

13 (Request complied with by the Witness)

14 A Yes.

15 Q And you will see the question (As read):

16 "OFAC Information on a Credit Report.

17 This is the information that the OFAC publishes, and you
18 also pass it on to your customers.

19 A That's right.

20 Q And it says:

21 "What is This OFAC Information On My Credit Report?"

22 And, it says, a little bit further down:

23 "This software matches the credit applicant's name and other
24 information to the names on OFAC's sanctions lists. If there
25 is a potential match, the credit bureaus may place a "red flag"

1 or alert on the report. This does not necessarily mean that
2 someone is illegally using your social security number or that
3 you have bad credit. It is merely a reminder to the person
4 checking your credit that he or she should verify whether you
5 are the individual on one of OFAC's sanctions lists by
6 comparing your information to the OFAC information. If you are
7 not the individual on the sanctions list, the person checking
8 your credit should disregard the OFAC alert, and there is no
9 need to contact OFAC. However, if the person checking your
10 credit believes you are the person on one of OFAC's sanctions
11 lists, then he or she should call the OFAC Hotline to verify
12 and report it."

13 Is this the standard of behavior that TransUnion expects
14 of the users of its OFAC Name Screen product?

15 **A** Absolutely.

16 **Q** And 71:

17 "How Can I Get The OFAC Alert Off My Credit Report?

18 "A consumer has the right under the Fair Credit Reporting
19 Act...to request the removal of incorrect information on his or
20 her credit report. To accomplish this, consumers should
21 contact the credit reporting agency or bureau that issued the
22 credit report."

23 What is the department of TransUnion that is responsible
24 for handling these requests?

25 **A** It's referred to as our Consumer Relations Group.

1 **Q** Do you have any information to suggest that they're not
2 doing their job diligently?

3 **A** No. They do an excellent job.

4 **MR. NEWMAN:** May we please have what was previously
5 admitted as Exhibit 42.

6 (Document displayed)

7 **MR. NEWMAN:** And Page -- Page 11 of the contract.
8 (Document displayed)

9 **MR. NEWMAN:** Which is, I believe --

10 **MR. SOUMILAS:** (Inaudible)

11 **THE COURT:** Can I ask you, Mr. Newman, how much
12 longer? I know we want to get this witness in.

13 **MR. NEWMAN:** I probably have another five; I'm very
14 close.

15 **THE COURT:** Okay.

16 **MR. NEWMAN:** Excuse me. What may have been -- let's
17 see. Sorry, yeah, it's Page 11 of the exhibit. Sorry.

18 (Document displayed)

19 **BY MR. NEWMAN**

20 **Q** Have you ever seen -- I know it's blurry, but have you
21 ever seen language like this (Indicating) before?

22 **A** Yes.

23 **Q** Less blurry, I hope. And in what context? In what
24 context have you seen --

25 **A** That's our typical language that we would have in our

1 end-user agreements with our customers, confirming the way they
2 are supposed to use that information, or not use that
3 information.

4 And it's also the type of language that we require our
5 resellers of our services to pass along to their end users who
6 sign up for that.

7 Q In other words, it's not -- there's not a contract between
8 TransUnion and the end user. This is language that TransUnion
9 requires the reseller to include in its contracts with the end
10 user. Correct?

11 A Yes. That's right.

12 Q And why is this language there?

13 A To ensure we're absolutely clear with our end users that
14 we do not want them using that information in any way to take
15 adverse action on that transaction. It's only to be used for
16 their OFAC regulation and compliance, and that's it.

17 Q And, will you please turn to --

18 MR. NEWMAN: Just two more exhibits, Your Honor, I
19 promise.

20 BY MR. NEWMAN

21 Q Will you please turn to Exhibit 72.

22 (Request complied with by the Witness)

23 A Yes.

24 Q What is Exhibit 72?

25 A This is an example of a contract between TransUnion and

1 our reseller. If that reseller wants to resell the OFAC Name
2 Screen service.

3 **MR. NEWMAN:** Your Honor, I offer 72 into evidence.

4 **THE COURT:** Any objection?

5 **MR. FRANCIS:** No objection, Your Honor.

6 **THE COURT:** 72, admitted.

7 (Trial Exhibit 72 received in evidence.)

8 (Document displayed)

9 **MR. NEWMAN:** And if we can just zoom in quickly on the
10 passage in the middle, with the "1," and then the indented
11 text.

12 And there's this language, and it says (As read)
13 "Prior to the OFAC Advisor being provided to a Customer,
14 Reseller obtain from each such Customer..."

15 (Reporter interruption)

16 **MR. NEWMAN:** I will slow down, I apologize.

17 **BY MR. NEWMAN**

18 **Q** This Paragraph 1 is a requirement that TransUnion imposes
19 on all resellers, correct?

20 **A** Yes. This is the paragraph where there's -- at a minimum,
21 this language needs to be flowed down into their customer
22 contracts that they want to sell this service to.

23 **Q** And what does the term "Subscriber" mean?

24 **A** That's the end user that's contracting for the service.

25 **Q** And it says:

1 "'In the event Subscriber obtains...'"

2 **MR. NEWMAN:** Am I doing better?

3 (Reporter nods)

4 **MR. NEWMAN:** Thank you. I apologize.

5 "'In the event Subscriber obtains TransUnion's OFAC Advisor
6 services in conjunction with a consumer report, Subscriber
7 shall be solely responsible for taking any action that may be
8 required by federal law as a result of a match to the OFAC
9 File, and shall not deny or otherwise take any adverse action
10 against any consumer based solely on Trans Union's OFAC Advisor
11 services.'"

12 **BY MR. NEWMAN**

13 **Q** What's the purpose of that language?

14 **A** To ensure that it's clear to our resellers that not only
15 do we want to hold them accountable for that rule, but also
16 making sure that they understand they need to hold their
17 customers accountable, so we require that to flow down to their
18 customers, in their contracts.

19 **Q** Can you please turn to Exhibit 93.

20 (Request complied with by the Witness)

21 **Q** Do you have 93? They might not have been in all the
22 binders.

23 **A** I don't have 93. Mine ends at 92.

24 (Off-the-Record discussion between counsel)

25 **MR. NEWMAN:** Your Honor, may I approach the witness?

1 **THE COURT:** You may.

2 **MR. NEWMAN:** Thank you.

3 **BY MR. NEWMAN**

4 **Q** Mr. O'Connell, what is 93?

5 **A** This is a piece of collateral that we provide to our
6 clients that helps them understand how to read our credit
7 report and, what types of ancillary services are available to
8 be delivered with that credit report.

9 **MR. NEWMAN:** Your Honor, I offer 93 into evidence.

10 **THE COURT:** Admitted.

11 **MR. FRANCIS:** (Nods head)

12 **THE COURT:** I saw you say okay.

13 (Trial Exhibit 93 received in evidence.)

14 **MR. NEWMAN:** Could we, please -- do you have it on --

15 (Document displayed)

16 **MR. NEWMAN:** Thank you.

17 **BY MR. NEWMAN**

18 **Q** How do you know this document was -- do you know when this
19 document was written?

20 (Witness examines document)

21 **A** Copyrighted, 2011.

22 **Q** And could you turn to the last page of the exhibit,
23 please.

24 (Document displayed)

25 **Q** And what -- so you can see there's a 2011 copyright

1 (Indicating) .

2 **A** Uh-huh.

3 **Q** Okay. And could you please go to Page 5 of the document.

4 **MR. NEWMAN:** Could we go to Page 5?

5 (Document displayed)

6 **MR. NEWMAN:** And the highlight at the very bottom.

7 **BY MR. NEWMAN**

8 **Q** What's a special message, by the way?

9 (Document displayed)

10 **A** That's a section of the report where we deliver messages
11 from other ancillary products, along with the credit report.

12 **MR. NEWMAN:** And actually, could you go back up to the
13 sort of grayed-out area, or the browned-out? I don't know how
14 to describe that color.

15 (Document displayed)

16 **BY MR. NEWMAN**

17 **Q** You'll see there is a reference to "OFAC NAME SCREEN
18 CLEAR." Is that the message that's delivered when there's a no
19 hit?

20 **A** Yes.

21 **Q** And why is the term "OFAC NAME SCREEN" used?

22 **A** To be clear that that's what the service is actually
23 doing. It's screening the name of the input.

24 **Q** And when did the term "OFAC Advisor" stop being used?

25 **A** I don't remember the exact date. It was prior to this. I

1 don't know exactly what date, but it was prior to 2010, I
2 believe.

3 **Q** Before 2010.

4 **A** I believe so, yeah.

5 **MR. NEWMAN:** And now, please, if we could go back to
6 the highlighted material you had earlier.

7 (Document displayed)

8 **BY MR. NEWMAN**

9 **Q** And could you just read that paragraph for us, "OFAC NAME
10 SCREEN (OPTIONAL)"?

11 **A** Yeah. It's intended to be an optional service, designed
12 to screen an applicant's name against an enhanced U.S. Treasury
13 Department Office of Foreign Asset Control database of
14 specially designated nationals, drug traffickers, and money
15 launders.

16 **MR. NEWMAN:** Mr. O'Connell, thank you. I have no
17 further questions for now.

18 **THE COURT:** Thank you.

19 Are you okay, ladies and gentlemen? Do you want to stand
20 up and stretch? Are you all right?

21 Anyone need to use the restroom? Are you okay?

22 (No response)

23 **THE COURT:** Everyone okay? We'll just stretch for a
24 moment.

25 (A pause in the proceedings)

1 **THE COURT:** All right.

2 (Off-the-Record discussion)

3 **THE COURT:** Okay. Are we ready? All right.

4 Mr. Francis?

5 **MR. FRANCIS:** Thank you, Your Honor.

6 **REDIRECT EXAMINATION**

7 **BY MR. FRANCIS**

8 **Q** Mr. O'Connell, you mentioned in your testimony to
9 Mr. Newman that it's your belief that TransUnion has the lowest
10 rate of false positives.

11 Did I hear you correctly?

12 **A** Yeah. I'm not aware of any service that's lower.

13 **Q** Yeah.

14 **MR. FRANCIS:** Mr. Reeser, would you please put up
15 Exhibit 20?

16 (Document displayed)

17 **BY MR. FRANCIS**

18 **Q** So, sir, I don't know, I don't think you were here, but I
19 will represent to you that this is an exhibit that came into
20 evidence. And this is actually an Experian credit report.

21 And I don't know if you are aware of this, but when
22 Mr. Ramirez applied for his car loan from Dublin Nissan, not
23 only was a TransUnion OFAC screen run, an Experian one was as
24 well.

25 Now, what I will tell you, if you look at the bottom --

(Document displayed)

Q -- under "MESSAGES," it reads:

"NAME DOES NOT MATCH OFAC/PLC LIST."

And the name for Experian is under that. Do you see that?

A I do.

Q Do you know what Experian is?

A Yes. It's a competitor, yeah.

Q It's one of your competitors.

A Yes.

Q Right?

Do you know what product Experian used in connection with Mr. Ramirez's transaction?

A I don't.

Q Okay. Do you know whether or not their product has a lower rate of false positives than yours?

A I don't know that.

Q Okay. So when you say: I believe that our product has the lowest rate of false positives, you don't know what one of your main competitors' rate is, do you?

A No, I don't know that it's below ours.

Q Okay. And one of our other main competitors is Equifax, correct?

A Yes.

Q Do you know what technology they use to screen people for OFAC?

1 **A** I don't know for sure, no.

2 **Q** Okay. And do you know whether or not the rate of false
3 positives that Experian -- or Equifax has is lower or higher
4 than TransUnion's?

5 **A** I don't know that for a facts.

6 **Q** Okay. So you don't know what your two main competitors do
7 in terms of screening for OFAC, do you?

8 **A** The only feedback that I got anecdotally from our clients
9 was they were concerned about how low ours was in comparison.

10 **Q** That wasn't my question.

11 My question is: Do you know what Experian and Equifax do
12 with regard to OFAC screening products?

13 **A** I do not.

14 **Q** And you don't know what their rates of false positives
15 are. Correct?

16 **A** I don't know that.

17 **Q** Okay. So when you are saying that: We have the lowest
18 rate of false positives, that's based on nothing. Correct?

19 **A** No. It's based on customer feedback that we've gotten and
20 heard anecdotally from our clients.

21 **Q** Okay. It's based on hearsay. Correct?

22 **A** Yes. That's correct.

23 **Q** Okay. Thought so. All right.

24 Now, Mr. Newman took you through some portions of the OFAC
25 bulletin published by Treasury. Do you recall that?

1 **A** I do.

2 **Q** And one of the things that was in the bulletin was an
3 instruction that people using -- extending credit should follow
4 certain procedures in terms of making sure they don't extend
5 credit to someone on the OFAC list. Correct?

6 **A** Yes.

7 **Q** That instruction pertains to the banks and the lenders who
8 are actually extending credit. Correct?

9 **A** Yes. They're responsible for that activity, yes.

10 **Q** Right. That's not a consumer reporting agency. Correct?

11 **A** It's irregardless of how that information gets provided to
12 the end user.

13 **Q** Would you agree with me that TransUnion, as a consumer
14 reporting agency, has a duty to sell information according to
15 the standard of maximum possible accuracy?

16 **A** For its use, yes.

17 **Q** And would you agree with me that banks and lenders do not
18 have that standard?

19 **MR. NEWMAN:** Objection. The witness is not a lawyer.
20 We don't know what standards apply to banks.

21 **THE COURT:** Overruled.

22 **THE WITNESS:** I don't know what standards banks follow
23 on data.

24 **BY MR. FRANCIS**

25 **Q** So my point is that regardless of what instructions or

1 requirements banks and lenders have, that's not the same law
2 that governs TransUnion, which is the Fair Credit Reporting
3 Act. Correct?

4 **A** There are many laws that cover TransUnion, yes.

5 **Q** Right. And one of the primary ones is the FCRA. Am I
6 correct?

7 **A** Yes, that's true.

8 **Q** Okay. Now, Mr. Newman also asked you some questions about
9 what the *Cortez* decision said. Correct?

10 **A** Yes.

11 **Q** And do you recall giving answers as to your understanding
12 of what the *Cortez* decision said?

13 **A** Well, I was talking about what we did in relation to that
14 *Cortez* decision.

15 **Q** Is it now your testimony that you don't know what that
16 decision said?

17 **A** In general terms, I do understand it.

18 **Q** Okay. So would you please turn in your binder to Exhibit
19 32.

20 (Request complied with by the Witness)

21 **MR. NEWMAN:** Your Honor, we object.

22 **THE COURT:** Well, let him ask the question.

23 **THE WITNESS:** Yes.

24 **MR. NEWMAN:** Your Honor, could we come to sidebar?

25 **THE COURT:** No. I understand what the ruling is.

1 **MR. NEWMAN:** Okay.

2 **THE COURT:** He can ask the question.

3 **MR. NEWMAN:** Okay, Your Honor.

4 **BY MR. FRANCIS**

5 **Q** Mr. O'Connell, you explained to the jury your version of
6 what the *Cortez* decision said. And so I'm going to ask you
7 questions to make sure you understand actually what it does
8 say. All right?

9 Would you please turn to 32-11. 32, actually, 10 and 11.

10 (Document displayed)

11 **MR. NEWMAN:** This has not been admitted into evidence,
12 Your Honor.

13 **THE COURT:** It's not into evidence, but it goes to --

14 **MR. NEWMAN:** No, it needs to come off the screen.

15 **THE COURT:** Oh.

16 (Document taken off display)

17 **MR. FRANCIS:** That's fine, Your Honor.

18 **BY MR. FRANCIS**

19 **Q** If you look at the bottom of Page 10, there's a sentence
20 that begins with: "The jury..." Could you please read it for
21 us, please.

22 **A** I'm sorry; where is it? On the bottom?

23 **Q** (Indicating)

24 **A** Bottom right?

25 **Q** Yes.

1 **THE COURT:** Well, let me ask you this way. Can you
2 ask it as a question?

3 **MR. FRANCIS:** Yes.

4 **THE COURT:** You know: From that decision, did you
5 understand that this is what the Court had said?

6 **MR. FRANCIS:** Yes, Your Honor.

7 **BY MR. FRANCIS**

8 **Q** Mr. O'Connell, you had expressed certain -- your views as
9 to certain aspects of what you thought the Cortez decision
10 said.

11 Are you aware that actually one of the things that the
12 Cortez decision said was that the jury could have reasonably
13 concluded that TransUnion could have taken steps to prevent and
14 minimize the possibility of an erroneous OFAC alert by using or
15 checking the date of birth of the consumer against the
16 birthdate of the person on the SDN list?

17 Are you aware that's what the Court said, at least at that
18 part of the decision?

19 **A** Not to that degree, no.

20 **Q** Oh. Okay. So, following Cortez, am I correct,
21 TransUnion, at least through 2013, from 2010 when the decision
22 came down through 2013, never used the date of birth in
23 connection with the OFAC product?

24 **A** We could not, no.

25 **Q** Okay. My decision was you didn't -- my question was you

1 did not do it. Correct?

2 **A** Correct.

3 **Q** All right.

4 You also expressed some statements regarding the Norgle
5 letter, Ms. Norgle's letter back to Treasury, from February 7,
6 2011, which was Exhibit 35 which I asked you about before.

7 **A** Uh-huh.

8 **Q** And you discussed the response of Ms. Norgle to that
9 letter.

10 Would you please look at Exhibit 35, and turn to Page 3.

11 **MR. FRANCIS:** Can you put up Page 3, please?

12 (Document displayed)

13 **THE WITNESS:** Yes.

14 **MR. FRANCIS:** And would you blow up the top portion of
15 Page 3, please.

16 (Document displayed)

17 **BY MR. FRANCIS**

18 **Q** Among other things, the paragraph reads that (As read):
19 "In response to the *Cortez versus TransUnion* decision,
20 TransUnion initiated a practice under which a consumer
21 obtaining his consumer report is notified if we would consider
22 his name to be a potential match to the SDN file."

23 Do you see that?

24 **A** I do.

25 **Q** And then the next sentence is:

1 "That notification is accompanied by instructions on how the
2 consumer can obtain further information from TransUnion about
3 our OFAC Name Screen service, and how to request TransUnion to
4 block the return of a potential match message on future
5 transactions."

6 Do you see that?

7 **A** I do.

8 **Q** Is it -- was that true?

9 **A** Did we do that? Yes.

10 **Q** Okay.

11 **A** Absolutely.

12 **MR. FRANCIS:** Mr. Reeser, would you please turn to
13 Exhibit 3.

14 (Document displayed)

15 **BY MR. FRANCIS**

16 **Q** Mr. O'Connell, Exhibit 3 is the letter that TransUnion was
17 sending to consumers who were considered to be a match during
18 the period of February, 2011 through July of 2011. There's
19 testimony that this is the letter (Indicating), and this is how
20 TransUnion would advise consumers of OFAC information in their
21 file.

22 Have you seen this letter before?

23 **A** I have not.

24 **Q** Okay. I will represent to you -- and if you can find it,
25 you let me know -- there is no instruction at all that

1 TransUnion provided to consumers in this class as to how to
2 block information in their credit file.

3 Well, take a look at it, and tell me if I'm wrong.

4 A Well, at the bottom of the letter, it provides: For
5 additional questions, contact TransUnion. For any additional
6 questions or concerns.

7 Q Can you tell me where in this letter there are
8 instructions to the consumer as to how to block OFAC
9 information on their file?

10 A No.

11 Q Okay. It's not there, is it?

12 A Not what you just said, no.

13 Q Yeah. Would you please turn in your binder to Exhibit 9.

14 (Request complied with by the Witness)

15 Q Mr. Newman asked you some questions about TransUnion's
16 attempt to reduce the rate of false positives following 2011.
17 Correct?

18 A Yes.

19 Q And one of the things that you mentioned was that you
20 asked Accuity to deliver a different type of product. Correct?

21 A An enhancement to the existing product.

22 Q Yes. And that was in 2011, correct?

23 A That's right.

24 Q But you didn't get that from them until 2013, isn't that
25 correct?

1 **A** Yes.

2 **Q** So you waited two years.

3 **A** Well, they continued to move the date of availability, so
4 in parallel to waiting for them to commit -- as they kept
5 moving their date, we did pursue analysis on our own to try to
6 figure out if it was possible or feasible for us to be able to
7 build it, ourselves.

8 **Q** You never told them: If you don't give this to us by next
9 month, we're going to use somebody else.

10 Correct?

11 **A** I don't recall that specific discussion, no.

12 **Q** Did you ever call up Experian, your competitor, and ask:
13 Who do you use?

14 **A** We don't have those kind of conversations with
15 competitors.

16 **Q** Did you ever call up your competitor, Equifax, and ask:
17 Who do you use?

18 **A** No, we don't do that.

19 **Q** Okay. Did you do anything to change the match logic
20 between 2011 and 2013 while you waited for Accuity to get back
21 to you over two years?

22 **A** No.

23 **Q** Now, at Exhibit 9, can you identify this document for me,
24 please?

25 **A** Yes.

1 Q Okay. What is it?

2 A It's an analysis that's a part of our consumer relations
3 disclosure and dispute project.

4 Q Yes.

5 MR. FRANCIS: Your Honor, plaintiff and the class move
6 Exhibit 9 into evidence.

7 MR. NEWMAN: No objection.

8 THE COURT: 9, admitted.

9 (Trial Exhibit 9 received in evidence.)

10 MR. FRANCIS: Can you please put that up, Mr. Reeser,
11 the first page?

12 (Document displayed)

13 BY MR. FRANCIS

14 Q Exhibit 9 is a -- a slide, series of slides that relate to
15 an analysis that TransUnion performed back in 2011. Correct?

16 A Yes.

17 Q Correct? Okay. Would you please turn to the third page.
18 (Document displayed)

19 Q On this slide, which is entitled "OFAC Disclosure/Dispute
20 Enhancements Project Scope," there are a series of key goals
21 and objectives that are identified.

22 Do you see those?

23 A I do.

24 Q And there is one that is in bold. Do you see that?

25 A I do.

1 Q And what's in bold is:

2 *"Tighten the OFAC matching rules to reduce the return of false*
3 *positive results."*

4 Do you see that?

5 A I do.

6 Q Would you agree with me that as of 2011, TransUnion was
7 concerned that its matching rules were not tight enough and it
8 was resulting in too many false positives?

9 A We are always trying to analyze improvements in products.
10 So yes, we always wanted to continue to bring down false
11 positives.

12 Q Now, when you're saying you're always wanting to improve
13 products, are you telling me, with this product, there's a
14 slide show like this for every month you're looking at this, to
15 reduce false positives?

16 This is a specific study, isn't it?

17 A This is a specific study. But there are many others like
18 it, yes.

19 Q Okay. And, would you please turn to Exhibit 10. It's in
20 the binder. It's the next exhibit.

21 Are you able to identify this document for the Court?

22 A Yes.

23 Q Okay. And what is this document?

24 A This was a subsequent analysis after the -- after the
25 previous one, where they weren't able to identify ways to do

1 the date-of-birth analysis before, this one was a subsequent
2 effort a little later, like a year or two later, trying to,
3 again, try to look for different ways to be able to do that.

4 **MR. FRANCIS:** Plaintiff and the class move Exhibit 10
5 into evidence.

6 **MR. NEWMAN:** No objection.

7 **THE COURT:** 10, admitted.

8 (Trial Exhibit 10 received in evidence.)

9 **MR. FRANCIS:** Would you please put up the first page
10 of Exhibit 10.

11 (Document displayed)

12 **BY MR. FRANCIS**

13 **Q** Am I correct, sir, that this is another series of slides
14 that TransUnion put together to study the OFAC hit analysis
15 issue?

16 **A** Yes.

17 **Q** Okay. And would you please turn to Page 11 of Exhibit 10.

18 (Request complied with by the Witness)

19 (Document displayed)

20 **A** Yes.

21 **Q** Page 11 of Exhibit 10 outlines certain data that
22 TransUnion compiled. Correct?

23 **A** Yes.

24 **Q** All right. And just real quickly, I want to go over what
25 the columns are, so we understand what this data is.

1 **A** Uh-huh.

2 **Q** The first column is "OFAC Hit Rate." Do you see that?

3 **A** I do.

4 **Q** And what does that mean, exactly?

5 **A** That's the percentage of potential matches delivered with
6 the product.

7 **Q** Right. And the next column is "Percentage only Potential
8 Candidates." Do you see that?

9 **A** I do.

10 **Q** And what does that indicate?

11 **A** I'm not sure what the criteria was to identify potential
12 versus the false positive, but, intended to represent the
13 percentage of only true potential hits.

14 **Q** And the next column after that is "Percentage some
15 Potential Candidates." What does that refer to?

16 **A** I'm assuming it's a mix of potential and false.

17 **Q** And the last column is "Percentage only False Positives."
18 Do you see that?

19 **A** I do.

20 **Q** Doesn't that column indicate hits that were only false
21 positives where there was no actual or accurate hit?

22 **A** I don't know what their definition in this analysis of
23 "false positive" was, but objectively, that's what their
24 intention was, yeah.

25 **Q** But you were part of the efforts that TransUnion was

1 making to study this data. Correct?

2 A I was not part of this analysis.

3 Q All right.

4 A I wasn't aware of it.

5 Q And then if you look, under the "Rule," there are various
6 rules that are listed. Correct?

7 A Yes.

8 Q And there is a rule one, two, three four down from the
9 top, that says "Name Rule 1A and date of birth," and there's a
10 greater-than sign, "10 Years." Do you see that?

11 A I do.

12 Q Do you know what that means?

13 A The "greater than ten years"?

14 Q Do you know what that rule is?

15 A Just from reading on this, it's a date of birth greater
16 than ten years' difference from the OFAC file.

17 Q Right. And do you know what 1A is?

18 A I don't.

19 Q If I tell you that 1A was a rule that TransUnion designed
20 to prevent a hit from being delivered where all parts of a name
21 didn't match, would you disagree with me that that's what 1A
22 is?

23 A If you say so.

24 MR. NEWMAN: Objection.

25

1 BY MR. FRANCIS

2 Q And would you agree with me, if you go over to the column
3 "Percentage False Positives," the number is "0%."

4 A Yes.

5 Q Do you see that?

6 A I do.

7 Q Do you agree with me that TransUnion, at least as of 2011,
8 had identified a method of returning hits that would result in
9 a zero percent false positive?

10 They were -- they identified a method for doing that.
11 Correct?

12 A No.

13 Q You don't agree that zero percent --

14 A This is a manual analysis that people were manually doing
15 to compare those rules. And if we were to figure out a
16 technical method to be able to deploy this at production, that
17 would be this. But this was strictly a manual effort to do
18 those comparisons.

19 So I -- I want to be clear about what you said.

20 Q Do you disagree with me that TransUnion's information was
21 that if that rule was applied, Rule 1A, and date of birth
22 greater than ten years, it would result in a zero percent false
23 positive?

24 A Yes, it would.

25 Q Okay. Now, in response to some of Mr. Newman's questions,

1 you stated several times, as I counted, that the TransUnion
2 product and enhancements that you outlined benefited consumers.

3 Do you remember giving that testimony?

4 **A** Yes.

5 **Q** Okay. Would you please take a look at Exhibit 8.

6 **A** Which one?

7 **Q** Exhibit 8.

8 **A** 8?

9 **Q** Yeah. At Section B.

10 (Request complied with by the Witness)

11 **Q** It's the class list.

12 **A** What page? Exhibit 8?

13 **Q** Exhibit B to --

14 **A** I'm sorry, I have 8.

15 **Q** Exhibit 8.

16 **A** Okay.

17 **Q** Exhibit B. And if you can go 8-01.

18 **A** This page?

19 **Q** Of Exhibit B. I don't know why --

20 **MR. FRANCIS:** May I approach the witness, Your Honor?

21 **THE COURT:** 8-14.

22 **THE WITNESS:** Thank you.

23 **MR. FRANCIS:** Yes.

24 **THE COURT:** That's Exhibit A, so --

25 **MR. FRANCIS:** It's actually B.

1 **THE WITNESS:** I'll get there.

2 **MR. SOUMILAS:** Here, just hand him this (Indicating).

3 **MR. FRANCIS:** Yeah.

4 May I just approach the Witness Your Honor?

5 **THE COURT:** You may. 8-36.

6 **THE WITNESS:** I got it, thank you.

7 **BY MR. FRANCIS**

8 **Q** Mr. O'Connell, I will represent to you that the stack that
9 I just placed in front of you --

10 (Document displayed)

11 **Q** -- represents the class of over 8,000 people in this case.

12 Is it your testimony that TransUnion's enhancements and
13 products benefited those 8,000 people?

14 **A** Absolutely.

15 **Q** Absolutely.

16 **A** Absolutely.

17 **Q** It's your testimony that the members of this class who
18 were identified as being a hit on the OFAC list were benefited
19 by TransUnion's practices.

20 **A** Yes.

21 **Q** Okay.

22 **MR. FRANCIS:** No further questions.

23 **THE COURT:** Mr. Newman, anything further?

24 **RECROSS-EXAMINATION**

25 **BY MR. NEWMAN**

1 Q Can you tell from Exhibit 10 WHEN --

2 THE COURT: You've got to --

3 MR. NEWMAN: Oh, sorry.

4 THE COURT: Come up to the podium.

5 MR. NEWMAN: Sorry.

6 BY MR. NEWMAN

7 Q Can you tell from Exhibit 10 when it was created?

8 A Oh. Sorry.

9 Q Turn to the second page of the document.

10 (Document displayed)

11 (Request complied with by the Witness)

12 A Which page?

13 Q Second page, the one that's on the screen. Second page of
14 the document.

15 A Second page?

16 (Request complied with by the Witness)

17 Q See, it says "Initial Request (July 2011)"?

18 A Yes. That was the first --

19 Q Right. So, when was Exhibit 10 created, if it's referring
20 to something that happened in July of 2011?

21 A I'm going by, based on what was in Page --

22 (Witness examines document)

23 A -- page 5, that represented data being analyzed from at
24 least later than July of 2012.

25 Q So this document didn't exist during the class period here

1 of January through July, 2011.

2 **A** It couldn't, because the data in the analysis was using
3 data created in July of 2012.

4 **Q** So there's nothing in here that could have helped -- none
5 of the knowledge learned through this study was obtained until
6 after the end of the class period here.

7 **A** That's right.

8 **Q** And going back to the exhibit that Mr. Francis just asked
9 you about, the class list.

10 **A** Yes.

11 **Q** It was Exhibit 8.

12 **A** Yes.

13 **Q** Can you tell which of the people on this list, --
14 (Document displayed)

15 **Q** -- if a Name Screen was sold on them, whether the date of
16 birth had been provided on input?

17 **A** No idea.

18 **Q** Can you tell whether the data that was returned, whether
19 the date of birth was on the OFAC list?

20 **A** No idea.

21 **Q** Can you tell if, even there was date-of-birth information
22 as to any of these people on the list, whether that was useable
23 or understandable at the time?

24 **A** No.

25 **MR. NEWMAN:** Thank you.

1 **MR. FRANCIS:** Your Honor, may I have --

2 **THE COURT:** Yeah, you may.

3 **MR. FRANCIS:** Real quickly, I promise.

4 **FURTHER REDIRECT EXAMINATION**

5 **BY MR. FRANCIS**

6 **Q** Sir, Mr. Newman was just asking you about the date of
7 plaintiff's Exhibit 10. Do you recall that?

8 **A** Yes.

9 **Q** Okay. And it was your testimony that the data that's in
10 there would have been compiled after the class period in this
11 case. Correct?

12 (Document displayed)

13 **A** Probably some of it, because it has statistics related to
14 July of 2012 on Page 5.

15 **Q** Is there any reason that the data that's contained within
16 plaintiff's Exhibit 9 or Exhibit 10 couldn't have been compiled
17 earlier than that date?

18 **A** I don't know. I don't know what the analysis was, in
19 detail.

20 **Q** Right. Am I correct that TransUnion could have studied
21 the rate of false positives and the other data that's in
22 Exhibits 9 and 10 in 2010?

23 **A** We did, in 2011. And they were unable to determine how to
24 do date-of-birth matching in that study.

25 **Q** That's not my question.

1 My question is: The data that you gathered and that
2 you're looking at in July of '11, or after July of '11, that
3 data could have been gathered earlier than that date. Correct?

4 **A** I don't know that for sure. Potentially.

5 **MR. FRANCIS:** Yeah. No further questions. Thank you.

6 **THE COURT:** Nothing?

7 All right. Thank you, Mr. O'Connell. You excused.

8 **THE WITNESS:** Thank you.

9 (Witness excused)

10 **THE COURT:** And ladies and gentlemen, that concludes
11 the proceedings for today. As I mentioned, we will be what we
12 call "dark" tomorrow. We will not be in trial. So it's
13 particularly important that you remember -- because your
14 friends, your co-workers are going to ask you what you've been
15 doing. Tell them you're under orders not to speak.

16 And then we'll see you Friday at 8:30. We will adjourn by
17 1:30, and we won't take a lunch break. So just keep that in
18 mind.

19 Thank you very much.

20 (Jury excused)

21 (The following proceedings were held outside of the
22 presence of the Jury)

23 **MR. SOUMILAS:** Your Honor.

24 **THE COURT:** Yes.

25 **MR. SOUMILAS:** Plaintiff Sergio Ramirez and the class

1 rest.

2 **THE COURT:** All right.

3 **MR. NEWMAN:** See you on Friday, Your Honor.

4 **THE COURT:** All right. See you on Friday.

5 I expect Friday to go so smoothly, given this extra day to
6 prepare. Not that everything hasn't gone incredibly smoothly.
7 I can appreciate all the hard work everybody has done.

8 **MR. NEWMAN:** Thank you. What time do you want us here
9 on Friday?

10 **THE COURT:** 8:15 again, because you may think of
11 something tomorrow that comes up.

12 **MR. NEWMAN:** Right. I wasn't sure if we were going
13 even earlier, because we have an early day.

14 Okay. Thank you, Your Honor.

15 **THE COURT:** Okay.

16 (At 3:14 p.m., the proceedings were adjourned until Friday,
17 June 16, 2017, at 8:15 a.m.)

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CERTIFICATE OF REPORTERS

We certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

_____/s/ Debra L. Pas

Debra L. Pas, CSR 11916, CRR, RMR, RPR

_____/s/ Belle Ball

Belle Ball, CSR 8785, CRR, RMR, RPR

Wednesday, June 14, 2017